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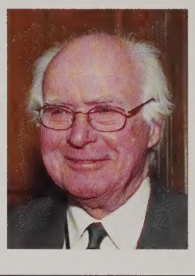
COVER: RICHARD DIEBENKORN, *Untitled (Yellow Collage)*, 1966, pasted paper, gouache, and ink on paper, 28 ¾ x 22 in. (73 x 55.9 cm). © Richard Diebenkorn Foundation. See article on p. 22.

IN MEMORIAM

EGBERT HAVERKAMP-BEGEMANN

1923–2017

SCHOLAR, PROFESSOR, CONNOISSEUR, FRIEND
IFAR ART ADVISORY COUNCIL MEMBER, 1970-2017



It is with great sadness that IFAR notes the passing of Egbert Haverkamp-Begemann, IFAR's longest-serving Art Advisory Council Member, who died on August 5. He had been involved with IFAR almost since our inception, joining the Council in September 1970. Over the years Egbert assisted IFAR's Authentication Research Service on a number of investigations relating to Dutch and Flemish Old Master paintings, including works with initial attributions to Adrian van Ostade, Meindert Hobbema, and Rembrandt. He also helped with IFAR's efforts to research and ultimately restitute a drawing formerly attributed to Rembrandt, but reattributed to Govert Flink, that had been looted during World War II (the drawing was later donated to the British Museum). As a specialist in Dutch drawings, Egbert let us know that the attribution to Rembrandt had been questioned by the scholar Jakob Rosenberg as early as 1956.

Egbert remained an active and enthusiastic supporter of IFAR up until his death, attending programs and advising us regularly. He was a speaker at a major *IFAR Evening* organized in 1986 on "The Catalogue Raisonné—Critical Issues," the first of several programs IFAR has devoted to this general topic. Just last spring, he was one of several specialists who examined a work submitted to IFAR as a possible portrait by Rembrandt, which turned out to be a work by Rembrandt's pupil, Ferdinand Bol.

Egbert received his Ph.D. from Utrecht University in 1958, and worked at the Museum Boijmans Van Beuningen in Rotterdam before coming to the United States in 1959. He was briefly at the Institute for Advanced Study at Princeton and at Harvard University before joining the faculty at the Art History Department at Yale University, where he taught from 1960-1974. During that time, Egbert also served as Curator of Drawings and Prints at the Yale University Art Gallery. It was while at Yale that Egbert got involved with IFAR. He joined the faculty at the Institute of Fine Arts at New York University in 1978, where he remained for the next 30 years. He was appointed the John Langeloth Loeb Professor of Art History, a position he held as emeritus professor up until his death. Egbert also held positions (often concurrently with his teaching) as Curator of Seventeenth-Century Dutch and Flemish Paintings at The Metropolitan Museum of Art; Coordinating Scholar at the Robert Lehman Collection at the Metropolitan Museum from 1980-2014; and Honorary Fellow and Acting Head of the Department of Drawings and Prints at the Pierpont Morgan Library (2001-2004).

His numerous publications included *Rembrandt: The Nightwatch* (1978) and *Rembrandt: Holy Family, St. Petersburg* (1975), as well as a book on the complete etchings of Hercules Seghers, and the volume on Peter Paul Rubens' *Achilles Series* as part of the *Corpus Rubenianum Ludwig Burchard* (1975). He was a long-serving member of the Editorial Board of *Master Drawings*, and as the Academic Advisor of Scholarly Publications for the Robert Lehman Wing, he oversaw the publication of the series of catalogues of the Robert Lehman Collection at the Metropolitan Museum. These achievements earned Egbert numerous

prestigious awards. He was named an Officer in the Order of Orange-Nassau, was a member of the Dutch Royal Academy of Sciences, and most recently was a recipient of the Bruce Museum's Icon Award in the Arts for 2017.

The success of a great mentor is measured in the achievements of his protégés. Egbert's former students include some of today's most distinguished curators, professors and scholars in the field of Dutch and Flemish art. Although not a student of Egbert's, Lisa Duffy-Zeballos, IFAR's Art Research Director, was fortunate to have him as an examiner on her orals committee at the Institute. In 2013, IFAR published a conversation between Egbert and IFAR Board Member Virgilia Klein in the *IFAR Journal* (Vol. 14, no. 3), in which he described the importance to him of combining teaching with museum work throughout his career. And when asked how art historians can train their eye, Egbert admitted that while an "innate facility and talent to use the eyes as an instrument" is essential to connoisseurship, "a good eye develops through scholarship and looking at art."

It was an honor to have known and worked with Egbert. He will be greatly missed. IFAR's Board of Directors and staff extend our sincere sympathies to his family.

—**LISA DUFFY-ZEBALLOS,** Art Research Director, IFAR
and **SHARON FLESCHER,** Executive Director, IFAR

• • •

IN MEMORIAM

LINDA NOCHLIN

1931–2017

PIONEER FEMINIST SCHOLAR, PROFESSOR, FRIEND
IFAR ART ADVISORY COUNCIL MEMBER, 1999 - 2017

As *IFAR Journal* was going to press, we learned the sad news of the passing of *another* IFAR Art Council member, Linda Nochlin, the Lila Acheson Wallace Professor Emerita of Modern Art at the Institute of Fine Arts, NYU.

A noted art historian of 19th Century Art, with seminal publications on Realism and Gustave Courbet in particular, including an influential article, "Gustave Courbet's *Meeting,* A Portrait of the Artist as a Wandering Jew,"[1] Linda Nochlin became better known in recent years for her championship of women artists of the 19th and 20th centuries. Her groundbreaking January 1971 *ARTnews* article, "Why Have There Been No Great Women Artists?", still resonates. It is safe to say that few articles on art have been

[1] Published in the *Art Bulletin,* 49 (September, 1967), pp. 209-22.

as influential, and the fact that it was published in a "mass" publication, in a writing style both accessible and even humorous, has added to its iconic status. The article can be said to have laid down a gauntlet to the art establishment, while it explained some of the art historical forces that worked against women achieving their potential in an art world seemingly stacked against them, an art world that, for example, excluded them from studying in prestigious art academies.

Some of the issues Linda Nochlin raised in the article were explored further in a landmark exhibition, "Women Artists: 1550-1950," which she co-curated a few years later (1976-77) with another distinguished scholar, Ann Sutherland Harris. The exhibition opened at the Los Angeles County Museum of Art (LACMA) in December 1976, but I had the pleasure of seeing it the next year at the Brooklyn Museum (October 1-November 27, 1977).[2] It was an eye-opener and I have never forgotten it. The well-worn exhibition catalogue still sits on my bookshelf at home, consulted by me to this day. While the exhibition of 150 plus works by 83 women artists included some already famous names (Rosa Bonheur, Mary Cassatt, Angelica Kauffmann), the revelation was how many of the artists were *not* familiar and how much new, in-depth scholarship the curators amassed for the catalogue. How many Ph.D. dissertations and M.A. theses, I wonder, were spawned by the catalogue entries? But, there is no question that an entire generation of art historians was awakened to the research possibilities surrounding so many undeservedly forgotten artists.

Professor Nochlin went on to an increasingly distinguished career as the champion of women artists, both living and deceased. She was a sought after speaker, writer, and curator about women artists, and, in 2007, co-curated the first exhibition at the newly-opened Elizabeth A. Sackler Center for Feminist Art at the Brooklyn Museum.[3] All the while, she continued to teach at the IFA until her retirement in 2013. Before joining the IFA faculty, Linda taught at Vassar College from 1963-1980 and The Graduate Center, CUNY, from 1980-1990.

Speaking personally, I first met Linda Nochlin when I was a Ph.D. candidate at Columbia University in the 1970s and she substituted for my dissertation advisor, Professor Theodore Reff, when he was on sabbatical. Our paths continued to cross, and not long after I became Executive Director of IFAR in 1998, I was delighted that she agreed to join our Art Advisory Council. She helped us initially with a purported Courbet painting submitted to our Art Authentication Research Service and then continued to provide wise counsel over the years. I and everyone at IFAR will miss her. We extend our sincere condolences to her family.

—SHARON FLESCHER
Executive Director, IFAR

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[2] The Brooklyn Museum was the fourth and last venue. The exhibition in Brooklyn was coordinated by Sarah Faunce, the museum's curator of painting and sculpture.

[3] "Global Feminisms," March 23 – July 1, 2007. Co-curated by Linda Nochlin and Maura Reilly.

• • •

JEFF KOONS FOUND LIABLE FOR COPYRIGHT INFRINGEMENT (AGAIN), THIS TIME IN FRANCE

American "appropriation" artist Jeff Koons is no stranger to accusations of copyright infringement, particularly for works produced as part of his 1988 *Banality* series of kitsch-inspired art. In the fourth lawsuit regarding a work from that series, a Paris court ruled in March[1] that Koons' porcelain sculpture of two nude children, entitled *Naked* **(FIG. 1)**, infringed on *Children,* a 1975 black-and-white photograph of two nude children by the late French photographer Jean-François Bauret **(FIG. 2)**.

The Koons sculpture had appeared in advertisements for a Koons retrospective held at Paris' Pompidou Centre in 2014.[2] Upon seeing the advertisements, Bauret's widow filed suit for copyright infringement in France against Koons, his company (Jeff Koons, LLC), and the Pompidou Centre for displaying images of *Naked* on their websites and in promotional material in France. As it happened, the sculpture was not part of the exhibit; it was pulled for supposedly unrelated reasons (although this step was only taken after Mme. Bauret visited the exhibit's curator to express her displeasure). Another Koons sculpture, *Fait d'Hiver,* was also pulled from the exhibit after a French fashion photographer alleged that it infringed on a photo *of his*, of the same name, which had previously appeared in a 1985 advertisement.

The Paris district court, the Tribunal de grande instance, ruled that it did not have jurisdiction over Koons himself for creating the infringing sculpture because the work had been produced in the U.S., but that it did have jurisdiction over Koons' company and the Pompidou for reproducing images of the work.

Koons argued that the Bauret photograph was not "original" enough to qualify for copyright protection. He also contended that his sculpture was protected because it was a parody of Bauret's work. The court rejected both arguments, asserting that Bauret's photograph of two nude youths was indeed distinctive and worthy of copyright protection. Koons' parody argument was also dismissed, as the court noted that Koons had never previously indicated how his work served as a parody of the photograph, nor what type of comment his sculpture was intended to make.

In addition to Koons' first two arguments, both of which were based on French copyright law, Koons added a third, based not on French law, but rather the laws of the European Union. Koons asserted that his work could not be deemed infringement because it was protected by his right to "freedom of expression" under Article 10 of the European Convention on Human Rights – a defense that does not exist in French copyright law.

FIGURE 1. JEFF KOONS, *Naked,* **1988. Porcelain sculpture.**

FIGURE 2. JEAN-FRANÇOIS BAURET, *Children,* **1975. Photograph.**

1 Tribunal de grande instance de Paris (3e ch. 4e sect.), 9 mars 2017, *Consorts Bauret c/ J. Koons, société Jeff Koons, Centre national d'art et de culture G. Pompidou,* No. 15/01086.

2 *Jeff Koons la rétrospective,* Pompidou Centre (November 26, 2014 - April 27, 2015).

"This case should serve as a warning to American artists … that, even if their works never leave the U.S., their appearance in French promotional material is itself sufficient, under French law, to subject the artists to claims of copyright infringement in France."

Nevertheless, the French Court addressed the argument anyway, largely because of a ruling by the European Court of Human Rights in a 2013 case,[3] which held that courts must conduct a balancing test in copyright infringement cases to determine whether finding in favor of a copyright holder would interfere with the freedom of expression of the alleged infringer.

After applying the balancing test, the Paris Court ruled that the reproduction of Koons' sculpture in promotional material was not protected free speech because it was "commercial" in nature, and did not involve a significant issue of public discourse. Moreover, the court stated that Koons failed to demonstrate why his use of the particular Bauret photograph was essential to expressing his message. As such, Koons and the Pompidou Center had violated Bauret's copyright. The Court ordered the defendants to pay €4,000 and €10,000, respectively, in damages to Bauret's widow, as well as €10,000 for failing to give credit to Bauret for the work, and a further €20,000 for Mme. Bauret's legal fees, for a total of €44,000.

This case should serve as a warning to American artists whose works are to be exhibited in France that, even if their works never leave the U.S., their appearance in French promotional material is itself sufficient, under French law, to subject the artists to claims of copyright infringement in France.

—NICHOLAS DIETZ
Legal Research Associate, IFAR

3 *Ashby Donald v. France,* Case No. 36769/08 (January 10, 2013).

• • •

CONSERVED OR COPIED?
ARTIST CADY NOLAND AT IT AGAIN OVER *LOG CABIN*

Earlier this year, the *IFAR Journal* reported that a lawsuit involving the fallout from the disavowal by American artist Cady Noland (b. 1956) of her 1990 sculpture *Log Cabin* had been closed.[1] But now, the District Court for the Southern District of New York ("SDNY") has another opportunity to examine the validity of Noland's claims, this time, in a suit brought by Noland herself in July.[2]

As previously reported by IFAR,[3] this story begins with the November 1990 sale[4] of *Log Cabin* by Galerie Max Hetzler in Cologne to German collector Wilhelm Schürmann (**FIG. 1**).[5]

1 See, "Dismissed Disavowal: Court Closes Noland *Log Cabin* Case Without Addressing VARA Issue," *IFAR Journal,* Vol. 17, no. 4 (2017).

2 *Noland v. Galerie Michael Janssen,* No. 1:17-CV-05452 (S.D.N.Y. complaint filed July 18, 2017).

3 "Avowals and Disavowals: When Can an Artist Say 'It's Not Mine!'?," *IFAR Journal,* Vol. 17, nos. 2 & 3 (2016).

4 The date of sale, November 15, 1990, was confirmed to IFAR by the Galerie Max Hetzler on November 8, 2017.

5 Please note: the sculpture illustrated in Figure 1 is the *Log Cabin* at issue in this case. We incorrectly illustrated a later (1993) version of *Log Cabin* in our two previous articles on the Noland-related suits in *IFAR Journal,* Vol. 17, nos. 2&3, 4.

The wooden installation, a log cabin façade, was subsequently exhibited outdoors for about ten years, at a museum in Aachen, Germany, and by 2010, had deteriorated to the extent that conservators replaced the logs and rebuilt the façade according to its original specifications and using the original fabricator. When *Log Cabin* was sold to American collector Scott Mueller in 2014 through another German gallery, Noland was notified of the extensive restoration that had been carried out, and promptly disavowed the work under the Visual Artist's Rights Act of 1990 ("VARA").

FIGURE 1. CADY NOLAND, *Log Cabin*, 1990. Wooden logs and other wood components, American flags, metal rings, and paper construction plans. 141 ¾″ x 218″ x 31 ½″. Installation shot, Galerie Max Hetzler, June 1990.

"We know that *Log Cabin* was created in 1990, exhibited at the Hetzler gallery in June 1990, and sold by the Hetzler gallery on November 15 of the same year, thus transferring legal title. It would appear that, for this reason alone, the VARA prong of Noland's case will be dismissed."

Although a part of the federal Copyright Act, VARA protects the "moral," rather than economic, rights of artists. Specifically, VARA provides rights of action related to the integrity and attribution of works of art. Living artists may disavow works they did not create or when the integrity of a work has been compromised in a manner "prejudicial" to their "honor or reputation," except when resulting from the "passage of time … the inherent nature of the materials … [or] conservation."[6] Noland's actions in *Mueller* led to a contractual dispute between buyer and seller, which ultimately did not provide an opportunity for the court to address whether her assertion of VARA was proper.[7]

Noland has now launched her own multi-part claim against the dealers, collectors, and art advisors involved in the sale of *Log Cabin*. She alleges negligence on the part of collectors who allowed the sculpture to deteriorate to the point that it required the discarding of original materials, a violation of the integrity of her work. Noland also argues that because conservation of *Log Cabin* required its being rebuilt, the sculpture as it currently exists is an unauthorized copy of her original 1990 work, which defendants tried to sell as original, thus infringing her copyright in addition to violating her VARA rights.

Noland has previously made VARA claims verbally, but this is the first time she has made one in court, and it is unlikely that it will be sustained. VARA was passed on December 1, 1990, but it did not take *effect* until June 1, 1991. Works created before that effective date *and* whose legal title was "transferred" by then are not subject to its protections. We know that *Log Cabin* was created in 1990, exhibited at the Hetzler gallery in June 1990, and sold by the Hetzler gallery on November 15 of the same year, thus transferring legal title. It would appear that, for this reason alone, the VARA prong of her case will be dismissed.

Noland has also made a claim under the New York Artists' Authorship Rights Act (the "Act"), a state law passed in 1983 and put in effect soon after, when

6 17 U.S.C. § 106A(a)-(c).For more detail, see this issue of *IFAR Journal*, Lena Saltos, "*Et Tu Brute*: Artists' Disavowals in This Moment of American Politics, pp. 39ff.

7 *Mueller v. Michael Janssen Gallery PTE., Ltd.*, No. 1:15-CV-04827 (S.D.N.Y. dismissed Dec. 2, 2016). This outcome is not unlike that of previous Noland disavowals, see, *e.g. Jancou v. Sotheby's*, also discussed in Saltos' article in this issue of *IFAR Journal*, pp. 39ff.

it was unclear whether there would ever be federal moral rights protection for visual artists.[8] The Act allows artists to claim or disclaim authorship of a work if it has been "altered, defaced, mutilated or modified other than by the artist, without the artist's consent [when] damage to the artist's reputation is reasonably likely to result or has resulted therefrom."[9] Modifications "resulting from the passage of time or the inherent nature of the materials" or conservation do not warrant disavowals unless gross negligence is involved.[10] Given that the standards of VARA and the New York moral rights law are so similar, Noland may simply be attempting to employ all legal avenues available to her.

Notably, however, the statute of limitations may already have run under the Act, claims for which must be "brought within three years of the act complained of or one year after the constructive discovery of such act, whichever is longer."[11] The restoration of *Log Cabin* occurred in 2010; Noland was notified of the allegedly negligent conservation in 2014; and she brought this suit in 2017. It remains to be seen whether this branch of her claim will be sustained. Even if both her VARA and Authorship Rights Act claims are dismissed, however, there is still the interesting possibility that her copyright infringement claim could move forward.

—SINCLAIRE DEVEREUX MARBER

Former IFAR Legal Intern
J.D./L.L.M. Candidate
Columbia Law School
London School of Economics

and **S. F.**

8 N.Y. Arts and Cult. Aff.§ 14.03 (Consol. 2017). A district court has supplemental jurisdiction over related state claims. 28 U.S.C. § 1367(a).

9 § 14.03(1)-(2)(a).

10 § 14.03(3)(a).

11 § 14.03(4)(b).

• • •

CLARIFICATION

N.B. In the article by Evelien Campfens and Irina Tarsis, "Cri-Me-A-River! Crimean Gold at the Crosshairs of Geopolitics," which appeared in *IFAR Journal,* Vol. 18, no. 1, all the objects shown on page 37 were returned to Kiev, and are not among the exhibition objects still being held in Amsterdam.

A NEW TURKISH CLAIM, AN OLD OTTOMAN LAW, AND ANONYMITY AT AUCTIONS

In July 2017, the Federal District Court for the Southern District of New York issued an uncommon ruling.[1] The court ordered Christie's auction house to reveal the identity of the anonymous high bidder who "won" an allegedly looted Turkish antiquity at an April 28, 2017 New York auction.

The court agreed with Turkey's contention that the anonymous bidder's identity must be revealed because he/she might have relevant information regarding the actions of the defendants, specifically Christie's and the consignor of the object, Michael Steinhardt, a New York-based financier, philanthropist and antiquities collector, who is no stranger to lawsuits involving allegedly looted antiquities. In issuing its ruling, the court overrode the long-standing custom of auction houses granting anonymity to consignors and bidders.

The day before the auction, the government of Turkey had sought a temporary restraining order (TRO) from a federal judge in New York to have Christie's withdraw a marble sculpture of a female idol dating from 3000-2200 BC, known as the "Guennol Stargazer," purportedly looted from Turkey in the early 1960s **(FIG. 1)**.

Although the TRO was denied, the attorneys for Christie's and the Turkish government reached a compromise agreement, which required Christie's to make an unusual announcement at the auction. Christie's informed potential bidders that the Republic of Turkey claimed ownership of the Stargazer and, as such, the winning bidder would not be required to pay the purchase price until 60 days after the auction, and would even have the right to cancel the sale.

While the announcement may have dissuaded some potential bidders, others were still interested in the idol. It was after all the highlight of the auction, appearing on the cover of the auction catalogue itself **(FIG 2)**. The Stargazer eventually sold to an anonymous bidder for over 12 million dollars. The high sales price was no doubt due, at least in part, to the object's provenance. It came from the renowned Guennol Collection, formed over five decades by the late Alastair Martin, a member of the Board of Trustees of both the Brooklyn Museum and Metropolitan Museum of Art. The collection included some of the most valuable privately-owned antiquities in the world, many of which, including the Stargazer, had been exhibited at museums in the U.S. and abroad, often for years at a time. The Stargazer had been in the U.S. since the 1960s.

Only a month after the auction, Turkey filed suit for possession of the idol. Due to the lawsuit, and the fact that Christie's had stated payment was not due until late June 2017, the anonymous bidder withdrew from the sale in mid-June. In spite of the withdrawal, in July, the court issued the ruling requiring Christie's to reveal the bidder's identity.

FIGURE 1. The "Guennol Stargazer" (marble, ca. 3000-2200 BC); allegedly looted from Turkey in the early 1960s; sold at an April 2017 Christie's auction to an anonymous bidder for $12 million.

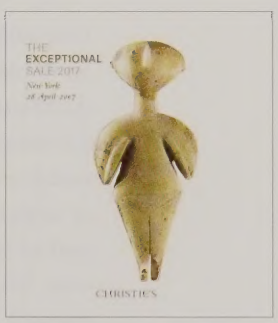

FIGURE 2. Catalogue cover for Christie's New York April 28, 2017 "Exceptional Sale," featuring the "Guennol Stargazer."

THE 1906 LAW

In its May 2017 complaint (amended in July to include Steinhardt as a defendant), Turkey asserted that it had title to the Stargazer – and all other antiquities unearthed in Turkey – based on a 1906 antiquities law

1 *Republic of Turkey v. Christie's, Inc. et al*, No. 1:17-cv-03086 (S.D.N.Y. July 26, 2017).

(the "1906 Law") enacted by the Ottoman Empire to apply to all the lands it controlled at the time, which included modern-day Turkey and most of the Middle East. Turkey has invoked the 1906 Law in other cases involving the recovery of cultural property.[2] In fact, in the current case against Christie's, Turkey submitted photocopies of the exact same translation of the Law it had filed in a case in 1994.[3]

"IFAR conducted its own research into the 1906 Law. … Our research revealed that the document Turkey submitted as the 1906 Law was actually a booklet containing *two different versions* of the Law, published by the Turkish government in 1966 in [the Latin script of] 'Modern Turkish'. … The document Turkey presented as an English translation ... is actually an amalgam of the two versions …"

Despite Turkey's frequent reliance on the 1906 Law, Christie's noted that no official Turkish-to-English translation of the Law was readily available on the Internet, or anywhere else, for interested parties to consult. This being the case, IFAR conducted its own research into the 1906 Law and produced its own English translations, now posted online on IFAR's Art Law & Cultural Property Database. We discovered that the Turkish-language document that Turkey submitted to the court is not the original 1906 Law, which is written in "Ottoman Turkish" using Arabic script **(FIG. 3)**. With some difficulty, IFAR was able to locate a copy of the *original* Ottoman Turkish version of the Law and produce an English translation.[4]

Our research further revealed that the document Turkey submitted as the 1906 Law[5] was actually a booklet containing *two different versions* of the Law, published by the Turkish government in 1966. The booklet is written in "Modern Turkish," which uses Latin (not Arabic) script. The first version in the booklet ("Modern Version 1" or "MV1") is a verbatim copy of the 1906 Ottoman Law, re-written in Modern Turkish. However, the second version ("Modern Version 2" or "MV2") is quite different and contains significant discrepancies from the original Law. IFAR's translations revealed that the document Turkey presented as an English translation of the 1906 Law is actually an amalgam of the two versions published in 1966, and *not* the 1906 text.

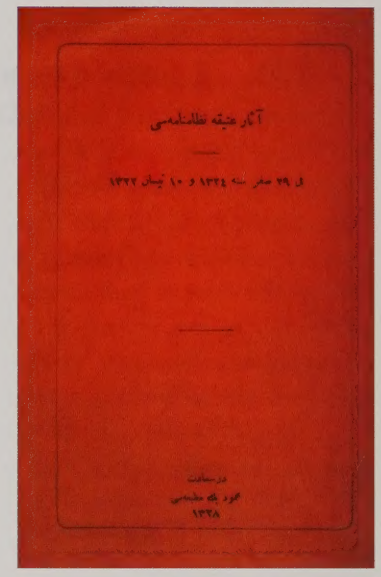

FIGURE 3. Cover of a printed copy of the original 1906 Antiquities Law written in the Arabic script of the Ottoman Empire.

In support of its ownership claim, Turkey's May 2017 complaint cites Article 4 of the 1906 Law, whose first line states that Turkey owns "all monuments and *immovable and movable antiquities*" [italics added] discovered on public or private land. However, this phrase does *not* appear in the first line of the original 1906 Ottoman Law, only in the 1966 pamphlet. Rather, the first line of the original text states that Turkey owns all "historical monuments and artifacts." The terms "movable and immovable"

2 e.g. *Republic of Turkey v. Metropolitan Museum of Art,* 762 F. Supp. 44 (1990), also known as the "Lydian Hoard" case.

3 *Republic of Turkey v. OKS Partners,* No. 89-cv-3061 (D. Mass. 1998).

4 A scanned copy of the original 1906 Law and IFAR's English translation can be found on the Country Summary page for Turkey on IFAR's Art Law & Cultural Property Database at www.ifar.org. (A printed copy of the 1906 Law can be found in the Southern Regional Library Facility at UCLA.)

5 *Turkey v. Christie's,* Plaintiff's Exhibit B (Document 28-2, pp. 3-12), filed May 26, 2017.

do not appear until the last line of Article 4, which states that the article is "valid for *all movable and immovable fine arts* items in the Empire." Although including the words "movable and immovable" in the first line of the 1966 printing of Article 4 might merely have been an attempt to clarify a confusingly worded law, another change in Article 4 belies this simple explanation. As noted above, the last line of the original Article 4 refers to "movable and immovable *fine arts*." Turkey's translation, in contrast, refers to "movable and immovable *Islamic antiquities*" – a category only found in the 1966 pamphlet.

Another discrepancy is even more telling. Although Turkey specifically cited only Article 4 in its May 2017 complaint, its translation of the full 1906 Law was submitted as supporting evidence.[6] According to Turkey's translation, Article 10 of the Law unequivocally states that: "All movable and immovable antiquities, yet situated on or in lands within Imperial Lands, are the property of the Government." But, this is in sharp contrast to IFAR's translation, which found no such line in the original 1906 Ottoman Law; it only appears in the 1966 version. In sum, our research indicates that neither the Turkish-language text of MV2, nor the English translation submitted by Turkey, accurately represents the original 1906 Ottoman Law.

In addition to the issue of textual accuracy, the parties dispute whether the 1906 Law was actually in effect when the Stargazer was allegedly looted in the early 1960s. Turkey asserts that it was in effect continuously from 1906. Christie's rejects this notion on the grounds that the Republic of Turkey did not exist at the time the Law was enacted, and that when the nation was established in 1923, it did not formally adopt the 1906 Law or enact a similar antiquities law of its own.

ANONYMITY

As mentioned earlier, the anonymous winning bidder of the Stargazer rescinded the auction purchase in mid-June. Despite this, on June 23, Turkey filed for a court order to require Christie's to disclose his/her identity during discovery, arguing that the bidder might have information regarding the degree of "vigilance" with which Christie's and/or Steinhardt investigated the idol's provenance.

Christie's and the anonymous bidder, who joined the case on June 26, under the pseudonym "John Poe," strenuously objected to Turkey's motion, noting that providing consignors and bidders with anonymity is common practice for auction houses, particularly in cases, such as this, involving extremely valuable items. Moreover, they argued, a *winning* bidder would have no more information about the activities of a consignor or auction house than any of the other bidders, and since "Poe" had withdrawn from the deal, he should not even be considered the winning bidder. In addition, as Turkey already knew the identity of the consignor (Michael Steinhardt), there was no need to question "Poe" about him.

While acknowledging the privacy concerns of both Christie's and the bidder, the court concluded that someone willing to spend $12 million on an item, despite being put on notice that Turkey claimed ownership of it, "might have relevant information" and ordered Christie's to reveal his/her identity. After the court issued detailed instructions in August 2017, placing strict limitations on who would have access to the information, Christie's revealed the bidder's identity to Turkey's attorneys.

DID TURKEY WAIT TOO LONG TO TAKE ACTION?

As the issue of the bidder's identity was being contested, the actual defendants in the case, Christie's and Steinhardt, jointly

6 *Ibid*, pp. 13-28.

filed a motion to dismiss Turkey's complaint, arguing that Turkey was barred by the doctrine of laches from making an ownership claim because it had unreasonably delayed taking action.

Christie's and Steinhardt rejected Turkey's assertion that it had only learned the location of the Stargazer shortly before the 2017 auction, as the idol's whereabouts had been public knowledge for decades. The work had been on continuous display at the Metropolitan Museum of Art from 1999 to 2007, and on temporary display there on many occasions between 1968 and 1993 (a time period during which Turkey was involved in a long-running lawsuit against the Museum to recover other allegedly looted antiquities). Further, the defendants' argued that Turkey must have been aware of the idol's location as Turkey's own Ministry of Culture published two books in the 1990s that specifically mentioned the idol as being part of the "Guennol Collection in New York."

Turkey responded to the motion to dismiss by asserting that mere knowledge of the object's location was insufficient to make a claim for its return. It said that it had only discovered that the idol lacked provenance just before the Christie's auction, meaning it did not know it had a claim to the work until April 2017. Turkey also invoked the 2016 Holocaust Expropriated Art Recovery Act (HEAR Act), in which the statute of limitations only begins to run when a claimant knows the location of a disputed object AND is aware that he/she has "a possessory interest" in the item. Since Turkey did not know it had an ownership claim to the idol until April 2017, it contends that its lawsuit was filed in a timely fashion and, therefore, laches does not apply.

The case is currently pending in federal court in New York.

—**N. D.** and **S. F.**

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LETTERS TO THE EDITOR

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U.S. EXTENDS IMPORT RESTRICTIONS ON OBJECTS FROM CYPRUS, MALI, AND GUATEMALA

CYPRUS

Without much fanfare, on July 16, 2017, the United States extended for five years a Memorandum of Understanding (MOU) with Cyprus, which prohibits the import into the U.S. of certain works of cultural property from Cyprus deemed "at risk" of pillage. Such MOUs are enacted and extended for five-year periods pursuant to the U.S. Cultural Property Implementation Act of 1983, which implemented the 1970 UNESCO Convention.

The United States' first MOU with Cyprus was enacted in 2002 (superseding emergency legislation from 1999). It restricted the importation of Classical and pre-Classical antiquities from Cyprus into the U.S. In 2007, the MOU was extended and amended to include restrictions on objects from the Byzantine era. It was extended again in 2012 and expanded again, to include "post-Byzantine" objects (c. 1500-1850). The 2017 extension does not add any additional restrictions to the existing ones and is set to expire on July 16, 2022.

MALI

On September 19, 2017, the United States extended, and amended, its MOU with Mali for five years. U.S. restrictions on objects from Mali began with emergency legislation in 1993 barring the importation of archaeological material from two ancient burial sites in Mali. A MOU restricting the same objects was enacted in 1997 and extended in 2002. The agreement was extended again in 2007 and expanded to prohibit the importation of archaeological material from throughout Mali, dating from the Paleolithic Era to the mid-eighteenth century. The MOU was extended again, without change, in 2012. The new MOU, which will expire on September 19, 2022, added manuscripts from the twelfth to twentieth centuries to the list of restricted items.

GUATEMALA

Also in September 2017, the U.S. extended its MOU with Guatemala. As with Cyprus and Mali, "at risk objects" from Guatemala were initially restricted from importation into the U.S. through emergency legislation, in this case a three-year "Emergency Action" implemented in 1991 and extended in 1994, barring importation of artifacts from a particular region of Guatemala. The Emergency Action was superseded by a 1997 MOU restricting the importation from *anywhere* in Guatemala of pre-Columbian artifacts dating from approximately 2000 B.C. to 1524 A.D. The MOU was extended in 2002, 2007, and 2012. The new MOU, set to expire on September 29, 2022, was amended to include restrictions on ecclesiastical objects dating from the Spanish conquest of Guatemala in the early 1500's until the nation's independence in 1821.

LIBYA

Meanwhile, as reported in the last issue of the *IFAR Journal,* in July 2017, the government of Libya submitted an official request to the United States for a MOU to assist in the protection of its cultural property, which has suffered severe looting since the fall of the Gaddafi regime in 2011.

—N. D.

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HERE WE AGO AGAIN: THE AGNES MARTIN CATALOGUE RAISONNÉ COMMITTEE DEFENDS ITSELF IN AUTHENTICITY DISPUTE

Quis custodiet ipsos custodes? This Latin phrase found in the work of the Roman poet Juvenal is translated as "who will guard the guards themselves?", a question that has come up regarding authentication committees and their ability to affect the art market.

In fact, this is the issue in an ongoing case begun last year, in October 2016, when London-based Mayor Gallery filed a lawsuit[1] in New York Supreme Court against the Agnes Martin Catalogue Raisonné LLC and the members of its authentication committee. While committee members Arnold Glimcher, founder and Chairman of the Pace Gallery, and Tiffany Bell, editor of the catalogue raisonné, are named directly in the complaint, the identity of other committee members has remained confidential under an "Attorneys' Eyes Only" designation.

As stated in the complaint, the Mayor Gallery accuses the authentication committee of unlawfully excluding from its forthcoming catalogue raisonné what it asserts are thirteen authentic Agnes Martin works that had been submitted by the Gallery's clients to the committee for review. The refusal to include these works, the Gallery says, "had at its purpose and was in substance and effect a declaration" that the artworks are fake, "rendering [them] worthless."[2]

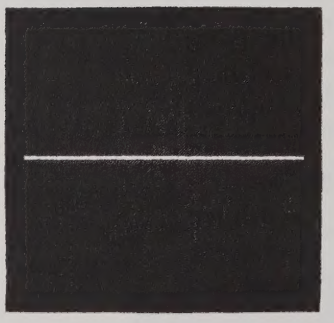

FIGURE 1. *Day & Night.* Acrylic on canvas, 72″x 72″. Signed, on the recto, lower left in pencil, "To Delphine, Agnes Martin, 1961-64."

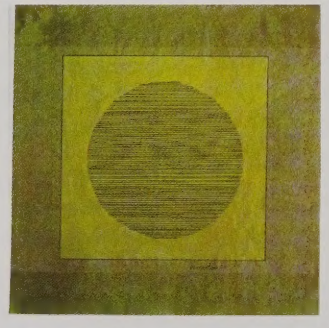

FIGURE 2. *Untitled.* Ink and yellow wash on paper. Signed and dated "A. Martin '59".

Two of the 13 works acquired from the Mayor Gallery London and rejected by the Agnes Martin Catalogue Raisonné committee.

Because of the authority ceded to authentication committees by the art market, distinguished dealers and auction houses rarely accept a work for sale unless it has been vetted and approved by an authentication committee or a recognized individual expert on the particular artist. As put forward in the complaint, Christie's and Sotheby's both recognize the in-preparation Agnes Martin Catalogue Raisonné as the definitive compilation of authentic artworks by Agnes Martin (1912-2004), a Canadian-born American artist whose spare and subtle compositions consisting of lines and grids are in high demand. The catalogue raisonné project was formed in 2012, eight years after Martin's death.

The rejected works were submitted by several different owners. *Day & Night,* for instance **(FIG. 1)**, had been acquired for $2.9 million in 2010 by collector Jack Levy.[3] After the authentication committee rejected the work and the sale was rescinded, the Mayor Gallery resubmitted the work with corrected provenance infor-

1 *The Mayor Gallery Ltd. v. Agnes Martin Catalogue Raisonné LLC et al.*, No. 655489/2016 (N.Y. Sup. Ct. *filed* Oct. 17, 2016).

2 *Ibid.*, p.10.

3 Jack Levy is the same collector who submitted a purported Jackson Pollock acquired from the Knoedler Gallery to IFAR for review, which IFAR said, in a 2003 report, that it could not accept as a Pollock.

mation and 1) additional documentation of the work's exhibition history; 2) photographs showing the painting with Agnes Martin and past owners; and 3) the results of radiocarbon testing of the canvas, all of which, the Gallery asserted, established the painting's authenticity. Nonetheless, in 2015, the committee rejected the work a second time. In its complaint, the Mayor Gallery says that the defendants have declined to offer any information as to why the works were rejected. Because the Mayor Gallery warranted the works' authenticity, some buyers,[4] in addition to Levy, rescinded the sales following the committee's rejection. Other purchasers[5] chose to retain ownership and possession of their works, but only until, and if, the Mayor Gallery would later establish their authenticity **(FIG. 2)**. The Gallery claims monetary damages in the amount of $7,233,438, the total amount that has been or will need to be refunded to the four purchasers.

As is often the case in authentication suits, the Mayor Gallery asserts, *inter alia,* claims for product disparagement, negligent misrepresentation, and tortious interference with contract and prospective business relations. More significantly, it alleges "obvious conflicts of interest" due to Arnold Glimcher's dual positions as a committee member and Chairman of the Pace Gallery, which represents the Agnes Martin Estate. In fact, the catalogue raisonné project is housed at the Pace Gallery. Moreover, the suit implies that Glimcher has a "longstanding friction" with James Mayor, director of the Mayor Gallery, which colored the committee's negative decision. Accusing committees of malice, self-interest and monopolistic practices has become a common stratagem in lawsuits against authentication entities.

In January of 2017,[6] the catalogue raisonné project and committee members moved to dismiss the complaint, accusing the Mayor Gallery of failing to state a legal claim and acting solely out of spite. They contend that all seven causes of action are barred by the hold-harmless waivers in the Examination Agreements signed when the works were submitted, pursuant to which: "No legal action or legal claim of any kind can be made against the Catalogue Raisonné or the Committee. Applicants expressly, knowingly and voluntarily waive such right." Interestingly, they also insist that their rejection of the thirteen works is *not* a testament to their inauthenticity, and should in no way be viewed as such, begging the question as to what it *should* be viewed as. Moreover, they assert their discretionary right, as an authentication committee, to decide which works to include in the catalogue, and they reject the Gallery's claim of any obligation to provide an explanation in support of their decisions.

Additionally, the defendants argue that because it was the *collectors,* not the Mayor Gallery, who entered into the Examination Agreements, agreements to which the Mayor Gallery was neither a party nor an intended third-party beneficiary, the Gallery has no standing to bring the suit, with the one exception of the agreement it signed with the committee relating to *Day & Night.* In its response,[7] the Mayor Gallery countered that it *did* have standing, seeing as its claims are grounded in tort rather than in contract law, and arise from the defendants' "duties in the marketplace of Agnes Martin artworks and to

4 Sybil Shainwald, who acquired *The Invisible* in 2012, also demanded that Mayor Gallery rescind the sale and refund the purchase price.

5 Patricia and Frank Kolodny, who acquired *Untitled* in 2009; Pierre de Labouchère, who purchased ten artworks from the Mayor Gallery in March and October 2013.

6 *The Mayor Gallery Ltd. v. Agnes Martin Catalogue Raisonné LLC et al.,* No. 655489/2016 (N.Y. Sup. Ct., Jan. 30, 2017).

7 *The Mayor Gallery Ltd. v. Agnes Martin Catalogue Raisonné LLC et al.,* No. 655489/2016 (N.Y. Sup. Ct. March 31, 2017).

the public at-large."[8] Further, the Mayor Gallery argued that it was legally bound only by one of the hold-harmless waivers (the one for *Day & Night*), precisely because it was *not* a party to the other Examination Agreements. As for the Examination Agreement for *Day & Night* that it did enter into, the Gallery asserts that the hold-harmless waiver is unenforceable on the grounds of "unconscionability" and public policy and thus non-binding, although such waivers have been upheld by the courts in the past.[9] In April 2017, the defendants filed a Reply Memorandum in further support of their motion to dismiss.[10]

While this case questions the decision-making process and the legitimacy of the Agnes Martin Catalogue Raisonné project, it can also be seen in context of the larger issue of authentication committees getting sued and ultimately pulling out of the authentication process altogether.[11]

—CELESTE DUFOURNIER
Legal Intern, IFAR
and **S. F.**

8 *Ibid.*, p. 14.

9 See *Lariviere v. Thaw*, No. 100627/99, (N.Y. Sup. Ct. June 26, 2000).

10 *The Mayor Gallery Ltd. v. Agnes Martin Catalogue Raisonné LLC et al.*, No. 655489/2016 (N.Y. Sup. Ct. April 26, 2017).

11 To cite just a few: the Pollock-Krasner Authentication Board in 1995 and the Andy Warhol Authentication Board in 2012.

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OWNING AN ARTWORK VS. OWNING ITS COPYRIGHT: THE CASE OF VIVIAN MAIER

Just because you own a work of art does not mean you own its copyright. This point is being driven home in an ongoing copyright case concerning thousands of works by the now-celebrated deceased amateur photographer Vivian Maier.[1]

When the 83-year-old Chicago nanny died nearly penniless in 2009, few could have imagined that Maier left behind any "estate" to speak of, much less one currently valued at tens of millions of dollars that would be the subject of litigation in federal court.

"When the 83-year-old Chicago nanny died nearly penniless in 2009, few could have imagined that Maier left behind any "estate" to speak of, much less one currently valued at tens of millions of dollars that would be the subject of litigation in federal court."

Over the course of her 40 years working as a nanny, from the 1950s to the 1990s, Vivian Maier spent most of her free time taking photographs, primarily of scenes of everyday life, as well as the architecture of Chicago, New York and Los Angeles. By the end of her life, she had produced a staggering 150,000 photographs, negatives, and video recordings **(FIGS. 1&2).** None had ever been publicly exhibited and most had never even been developed.

FIGURE 1. Vivian Maier, *Self-Portrait*, undated photograph, posted on vivianmaier.com.

FIGURE 2. Vivian Maier, untitled photograph (New York, October 31, 1954), posted on vivianmaier.com.

1 *Estate of Vivian Maier v. Jeffrey Goldstein*, No. 1:17-cv-02951 (N.D. Ill. *filed* Apr. 20, 2017).

In 2007, Maier, then aged 81, failed to pay the rent on the storage space that housed the vast majority of her works, and the contents were auctioned off; nearly all were purchased by three individuals. Collectors Ron Slattery and Randy Prow each purchased several thousand works, while collector John Maloof bought 30,000. Maloof went on to acquire tens of thousands of additional works by Maier and asserts that he now owns fully 90% of Maier's total output. In 2010, Prow sold his Maier works to another collector, Jeffrey Goldstein, whose own collection would grow to roughly 20,000 works.

"Under the U.S. Copyright Act, the physical ownership of a photograph – or any other work of art – does not grant ownership of its copyright."

Under the U.S. Copyright Act (17 U.S.C. §§ 101 *et seq.*), the physical ownership of a photograph – or any other work of art – does not grant ownership of its copyright, i.e. the ability to produce duplicates for sale, license the work to third parties, or otherwise profit from the image (other than by selling the physical work itself). Rather, the creator of the work automatically owns its copyright for life, after which the copyright ownership passes to his/her estate for 70 additional years. Since Maier never sold her copyrights and died intestate, her "estate" retained the copyrights, even though most of her physical photographs had been purchased. At the time of her death, however, Maier had no known relatives to inherit her copyrights – although Maloof reportedly tracked down her closest heir, a cousin in France, and purchased the copyrights to Maier's work from him for $5,000.

Beginning in 2010, both Maloof and Goldstein, separately, began exhibiting Maier's work around the world, selling prints, and publishing books of her images; Maloof even produced an Oscar-nominated documentary about her life **(FIG. 3).** As noted above, however, neither Maloof nor Goldstein, owned the copyrights to the images and were thus not legally entitled to reproduce them without permission. Nevertheless, no legal action was taken against either of them, primarily because no heirs to Maier's estate had come forward to press their claims.

This changed in 2014 when a Virginia lawyer and photographer, acting on his own volition, located a "new" Maier cousin in France and filed an action in Cook County Probate Court seeking to have the cousin named the heir to the Estate of Vivian Maier (the "Estate").[2]

Under Illinois law, when there are rival claimants to the estate of a person who dies intestate, the "public administrator" of the county (in this case, David Epstein of Cook County) becomes the estate's representative. After the 2014 claim was filed, Epstein informed owners of Maier's works, including Maloof and Goldstein, that they were not to sell or otherwise disburse their holdings until a settlement could be reached.

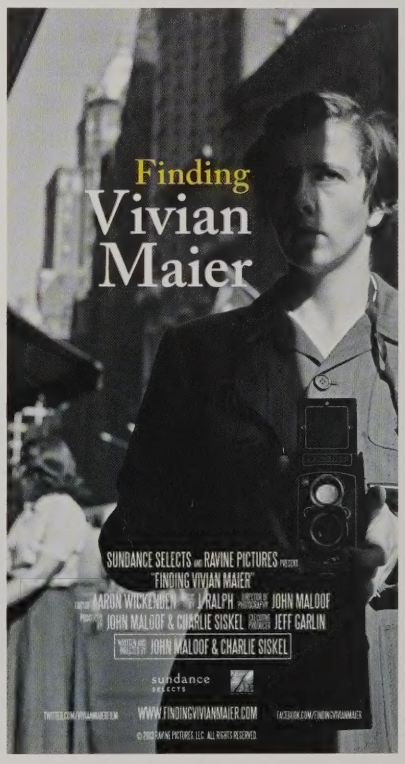

FIGURE 3. Poster for *Finding Vivian Maier*, Oscar-nominated documentary about Maier produced by John Maloof in 2013.

2 *Estate of Vivian Maier*, No. 14-P-003434 (Cook Cnty. Prob. Ct. (Ill.) *filed* July 1, 2014).

In May 2016, Maloof did reach such a settlement, in which he was permitted to continue exhibiting Maier's work and retain an undisclosed percentage of any profits (with the rest going to the Estate). In contrast, Goldstein allegedly acted in bad faith, negotiating with Maier's estate over the works in his possession, while simultaneously searching for potential buyers in Canada. In December 2014, Goldstein sold 17,000 of his 20,000 Maier works to a Toronto art gallery and stopped cooperating with the Estate. Two months later, he went so far as to sue the Maier estate for unjust enrichment, claiming that it was unfairly profiting from his promotion of Maier's work, which had led to their becoming valuable in the first place. The suit was dismissed in January 2016.

While the probate case and his own lawsuit were in progress, Goldstein continued to exhibit Maier's work, in violation of the Administrator's request, as well as U.S. copyright law. Consequently, in April 2017, Epstein, acting as the representative of Maier's estate, filed suit against Goldstein in Federal District Court for the Northern District of Illinois, alleging copyright and trademark infringement.[3]

The complaint asserts that in 2010, shortly after purchasing Randy Prow's collection of several thousand works by Maier (most of which he would later sell to the Canadian gallery), Goldstein founded "Vivian Maier Prints, Inc.," a name intended to fool prospective buyers into believing that Goldstein was authorized by Maier's Estate to sell prints of her work. To the same end, in 2011, Goldstein acquired the domain name "vivianmaierprints.com," through which he sold Maier prints. The Estate deemed both of these actions to be trademark infringements, as they illegally traded on the goodwill associated with Maier's name.

The complaint further alleges that Goldstein infringed on Maier's copyrights by, among other things, publishing two books of her work, licensing her images to the BBC without authorization, and selling unauthorized prints to galleries throughout the U.S. and abroad; actions which generated as much as $500,000 annually.

As the majority of Maier's works had never been catalogued, the Estate found itself in the awkward position of having to ask the court for access to the 3,000 works remaining in Goldstein's collection in order to "identify … all Maier photographs [in his] possession, custody, or control" and then "register the copyrights in the works," specifically so that it could then sue Goldstein retroactively for infringing the copyrights they had just registered. The court granted the Estate's request.

In August 2017, Goldstein filed a motion to dismiss the Estate's lawsuit for failure to state a claim, asserting, among other things, that the federal district court lacks jurisdiction to hear the case because of the "probate exception," which holds that only state courts can hear cases involving the administration of a decedent's estate. Moreover, since the probate case involving Maier's estate was still ongoing, Goldstein asserted that *all the issues* involving the Estate should be adjudicated together in *that* case.

The Estate responded in October 2017, asserting that its claims should indeed be heard in federal court because they did not involve physical property within the Estate and were thus not bound by the "probate exception." Moreover, only federal courts have jurisdiction to hear copyright disputes.

Another argument put forth by Goldstein was that the physical images in his collection were not part of Maier's estate because they had originally been purchased while Maier was still alive, and heirs can only inherit the copyrights of works that are physically part of a

[3] See fn 1.

decedent's estate at the time of his/her death.

The Estate responded that the date Goldstein had acquired Maier's work was irrelevant because, as stated in the U.S. Copyright Act, the "transfer of ownership of any material object … does not of itself convey any rights in the copyrighted work."[4] That is, although Goldstein had acquired Maier's physical works, he had not acquired the copyrights, and by making copies of the works, he had infringed on the Maier estate's copyrights. As the Copyright Act states: "Ownership of a copyright … is distinct from ownership of [a] material object."[5]

On November 20, 2017, while IFAR was at press, the district court agreed with substantially all of the Estate's arguments and denied Goldstein's motion to dismiss, allowing the case to proceed.[6]

—N. D.

4 17 U.S.C. § 202.

5 *Ibid.*

6 *Estate of Vivian Maier v. Jeffrey Goldstein,* No. 17-cv-02951 (N.D. Ill. Nov. 20, 2017).

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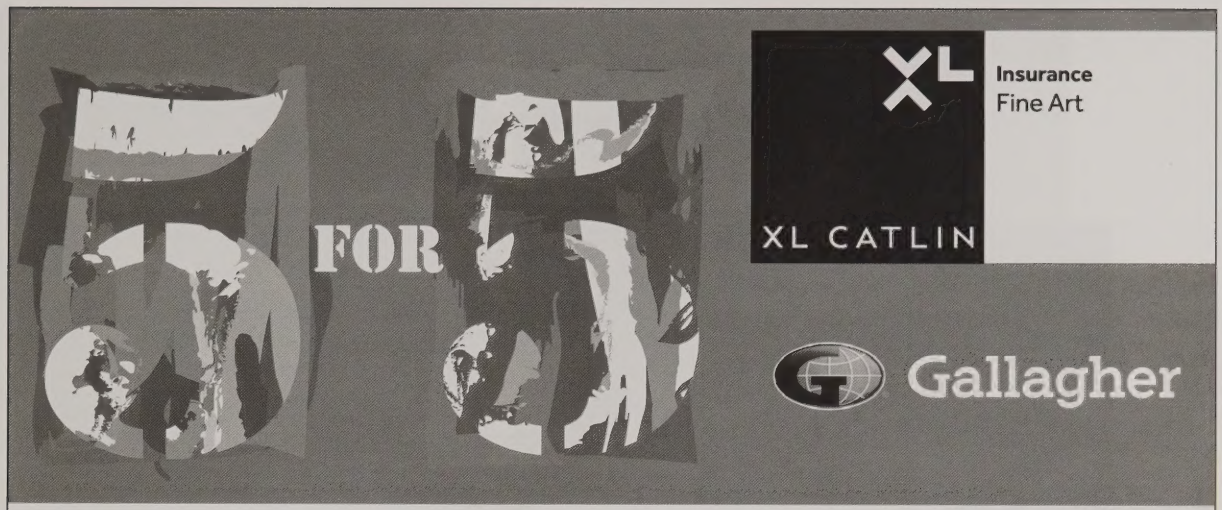

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MY FATHER, RICHARD DIEBENKORN

Excerpted and edited from an *IFAR Evening* talk by

GRETCHEN DIEBENKORN GRANT

EDITOR'S NOTE: *On May 24, 2017, IFAR hosted a sold-out IFAR Evening in New York entitled "Matisse/Diebenkorn—Influences and Affinities." The speakers were noted curator, art historian and IFAR Art Council member, John Elderfield, and Gretchen Diebenkorn Grant, the daughter of famed California artist Richard Diebenkorn. Timed to coincide with a major exhibition, "Matisse/Diebenkorn," co-organized by the Baltimore Museum of Art and the San Francisco Museum of Modern Art, the program discussed the two artists from different perspectives and also highlighted the influence that the older French artist had on the younger American and their many affinities. IFAR is grateful for the partial financial support for the program that was provided by Art Agency Partners. The following article is an edited and excerpted version of Gretchen Diebenkorn Grant's talk that evening.*

I am often asked what it was like to live with a creative man, in this case, Richard Diebenkorn (1922-1993), who was not only an artist, but also my greatly loved father **(FIG. 1).** On the understanding that I am writing as an admiring daughter, and not as an art historian, I would like to share some of my thoughts about my father and his life-long admiration for Henri Matisse (1869-1954), whom he never met.

FIGURE 1. Richard Diebenkorn in his Santa Monica Home, 1984. Photo © Leo Holub.

Why was Matisse such a lifelong inspiration? I can only speculate, but, intuitively, I sense that both artists looked at their surroundings in a similar way, and this includes their inner musings. The intensity of the act of looking and seeing is related in the two men **(FIGS. 2 & 3** and **4 & 5).** They both were committed to a life of observing so deeply that distractions and interruptions were not as important as what they were putting through the resources of their own minds. I sense that both men found their lives, and specifically their surroundings, to be a muse.

FIGURE 2. HENRI MATISSE, *Goldfish and Palette,* 1914, oil on canvas, 57 ¾ x 44 ¼ in (145.64 x 112.39 cm). Coll. The Museum of Modern Art, NY. © 2017 Succession H. Matisse/ARS NY.

FIGURE 3. RICHARD DIEBENKORN, *Urbana #6,* 1953, oil on canvas, 69 ¼ x 58 in. (175.9 x 147.3 cm). Coll. Modern Art Museum of Fort Worth. © Richard Diebenkorn Foundation.

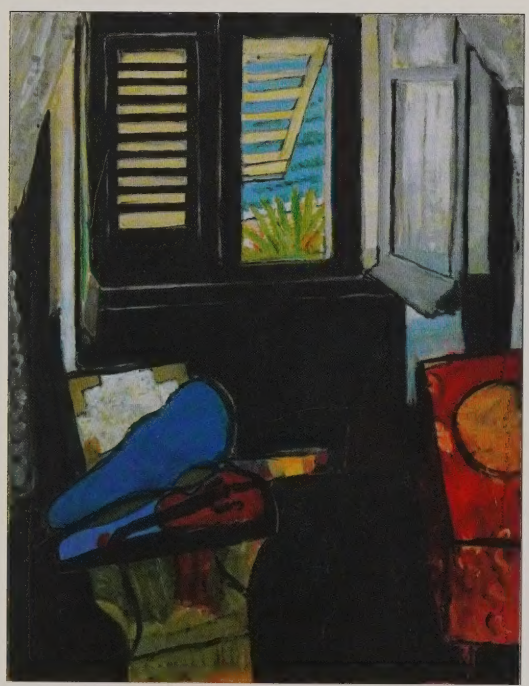

FIGURE 4. HENRI MATISSE, *Interior with a Violin,* 1918, oil on canvas, 45 ⅝ x 35 in. (115.89 x 88.9). Coll. Statens Museum for Kunst, Copenhagen. © 2017 Succession H. Matisse/ARS NY.

FIGURE 5. RICHARD DIEBENKORN, *Interior with Doorway,* 1962, oil on canvas, 70 ⅜ x 59 ½ in. (178.8 x 151.1 cm). Coll. Pennsylvania Academy of Fine Arts, Philadelphia. © Richard Diebenkorn Foundation.

FIGURE 6. HENRI MATISSE, *Interior at Nice,* c. 1919-1920, oil on canvas, 52 x 35 in. (132 x 88.9). Coll. The Art Institute of Chicago. © 2017 Succession H. Matisse/ARS NY.

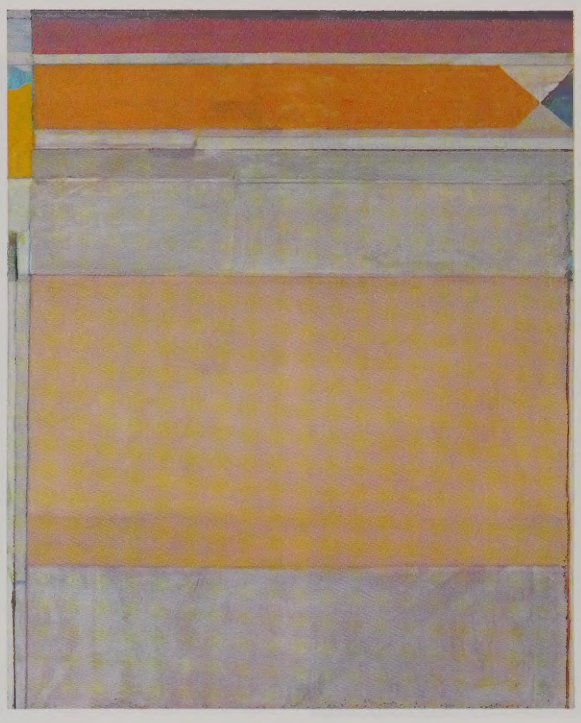

FIGURE 7. RICHARD DIEBENKORN, *Ocean Park #122,* 1980, oil and charcoal on canvas, 100 ¼ x 81 ¼ in. (254.6 x 206.4 cm). Coll. SFMOMA. © Richard Diebenkorn Foundation.

Some artists have lives in society, or use their art to express their political views. My father was conflicted at best by social events, and although he was very committed and informed about the politics of his time, and indeed created posters and sets of etchings to be sold to support these opinions, his art did not overtly reflect his politics. Matisse lived through two world wars and I do not see evidence of these extraordinary, tumultuous events in his work except in a subtle sense that the status quo was changing, thus reflecting the upheaval of his time. This is not to say that either of these men lived outside their historical contexts or were unaffected by world events. Rather, they were each in their way exploring new and adventurous ways of expressing themselves, which is another way of living in one's time.

Additionally, the two men shared a compatible palette. Some artists cannot be hung in the same room as other artists; their palettes and ideas diminish each other's work. Having seen the beautiful show put together by the curators of the Matisse/Diebenkorn exhibition in San Francisco and Baltimore,[1] I can confidently say that Matisse and Diebenkorn *can* be hung in the same room. So it is not just their way of looking, but some inner sense of how the world is perceived by them and then reflected in their work that makes me feel a connection between them.

Both men engaged with the other artists of their own times and also studied the artists of the past. To me, Matisse and my father are part of a long history of artists who observed and interpreted the world in an informed and committed way. However, they both retained a "Matissean" or "Diebenkornian" feel throughout their careers.

For me, all of my father's work, abstract or representational, is connected; it is all a part of a continuum of the way he observed and reacted to the world around him. He always spent time intensely looking and drawing. As a child, he was given the cardboards from his father's shirts to use for his drawings. Because he was an only child, I think it was initially a way for people to keep him busy. His grandmother painted (quite lovely landscapes), and she took him to art exhibitions.

My father and Matisse are known for their sensitivity to the light and color of a particular place.

1 "Matisse/Diebenkorn," co-organized by The Baltimore Museum of Art (October 23, 2016 – January 29, 2017) and the San Francisco Museum of Modern Art (March 11-May 29, 2017). Co-Curators, Katherine Rothkopf and Janet Bishop.

FIGURE 8. RICHARD DIEBENKORN, ***Cane Chair – Outside,*** 1959, oil on canvas, 32 x 27 in. (81.3 x 68.6 cm). Promised gift of a private coll. to SFMOMA. © Richard Diebenkorn Foundation.

FIGURE 9. RICHARD DIEBENKORN, ***Chair Outside,*** c. 1959, oil on canvas, 28 x 24 in. (71.1 x 61 cm). © Richard Diebenkorn Foundation.

I think it is no accident that many of their pictures are titled with the name of the place where they were painted **(FIGS. 6 & 7).** All these places have a very different look and quality of light.

Some of my favorite memories of my father have to do with the way he taught me to see. I am unable to look at certain places or certain things without thinking of him. There is a place as you approach the Bay Bridge on the way to San Francisco from the East Bay where you can see the water. He would comment on the color of the water *that* day as opposed to another.

He taught me to see the variation of color within something that we would describe as yellow or blue; how reflections, shadows, worn places, dirt, etc. can affect the color we see if we look more completely and carefully. Although we think of a rattan chair as being mottled tan, we still recognize it when its colors are pushed or altered into a different part of the spectrum, as in the two paintings of cane chairs he did in 1959 **(FIGS. 8 & 9).**

Our life was organized around his life and always was. When he was drawing or in the studio, he

FIGURE 10. RICHARD DIEBENKORN, six untitled works, 1975, collage on cardboard with wooden frame, dimensions vary from 1 ¾ x 1 ½ in. (4.4 x 3.8 cm) to 3 x 2 ⅛ in. (7.6 x 5.4 cm). © Richard Diebenkorn Foundation.

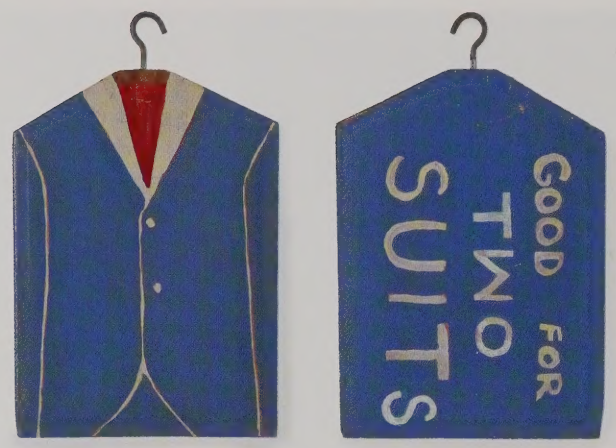

FIGURE 11. RICHARD DIEBENKORN, ***Untitled,*** n.d., oil on wood panel with metal hook, 8 ⅝ x 5 ⅜ x ¼ in. (21.9 x 13.7 x 0.6 cm). © Richard Diebenkorn Foundation.

was not to be disturbed. And often the studio was in the house. As a grandfather, he shared much of his fantastic sense of humor and delight in images with my children. When my father found out that we were making a doll house for our daughter, he said, "You can't have a house without paintings," so he made six matchbook-size paint collages that are each trimmed in actual wood **(FIG. 10).** On the backs of each one (shown on the bottom row of **FIG. 10**), he indicated how they should be hung. On the second work from the right, he credits Egon Schiele because the collage began with a postcard of Schiele's. These were presented to our daughter in a decorated cigar box.

My father didn't like to shop, so when a birthday or Christmas came along, he and my mother would determine what they were going to give, and he would make a card and accompany it with a check. When my mother got a job where she needed a suit, he made a three-dimensional work out of wood that has a metal hanger on it **(FIG. 11).** A few days later they went shopping to buy my mother two new suits.

The way our various houses looked inside was different from any of the houses of my friends. The furniture wasn't conventional – much of it was designed and made by my father or found by him in junk stores. My parents resisted curtains and drapes – possibly because of what one misses when the exterior view is obscured and certainly also because of the resulting loss of light.

The couch in our living room (and I don't mean "sofa") was covered in an Indian bedspread and usually had our dog, Valentine, sleeping on it **(FIG. 12).** In an era where everything, it seemed to me, was supposed to be matched (sweater sets, purses and shoes, furniture, cups and saucers), nothing matched anything else in our house.

My father changed what was hanging on the walls often. New works were constantly moving in and out of the house. There were drawings and objects on every available ledge, and piles of framed drawings and paintings leaned against walls. In my early years, they were hung with abstract works. My brother and I were admonished not to find objective things in the pictures, which became complicated in the Berkeley Period, as he began exploring figuration.

FIGURE 12. RICHARD DIEBENKORN, ***Untitled,*** c. 1958, gouache and graphite on paper, 14 x 17 in. (35.6 x 43.2 cm). © Richard Diebenkorn Foundation.

Also during this time there were lots of drawings of nude women **(FIG. 13),** and occasionally men as well. These drawings mostly resulted in averted eyes, or in some cases covert glances, but only in very rare instances any appreciation or under-

FIGURE 13. RICHARD DIEBENKORN, ***Untitled,*** c. 1960–66, gouache, crayon, and graphite on paper, 14 x 17 in. (35.6 x 43.2 cm) © Richard Diebenkorn Foundation.

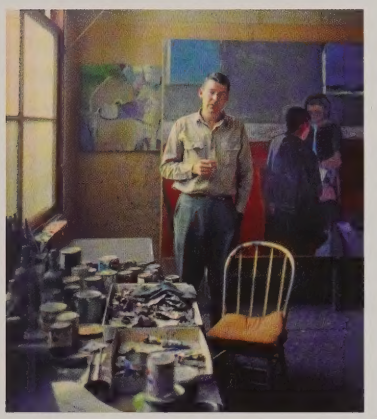

FIGURE 14. Richard Diebenkorn in his Hillcrest studio, Berkeley, 1959. Photo © Fred Lyon.

standing by my friends. My mother told me I went through an extended period during which I longed to live in an ordinary house furnished with matching everything that was a simple variation on the house next door and the one next door to that. But in our house everything had a visual significance.

Except for weekly Wednesday drawing nights with his artist friends, my father worked alone in the studio. When, late in his life, I worked for him as his secretary, he often received lovely letters, usually with impressive resumes attached, asking if the sender could be a studio assistant. I was instructed to write and say that he worked alone and that the only presence he would allow when working was his dog, Amie.

His studios over the years shared certain characteristics. There were the smells of paint and turpentine; there was (whenever possible) diffuse north light **(FIG. 14);** there were lots of art books lying about and tools and, of course, all sorts of paint and materials on tables and on the floor that were in an order known only to him.

Things were tacked up on the wall, some of which had to do with what he was working on; others were there simply because they interested him in some way. This Ocean Park studio image **(FIG. 15)** was taken as he was preparing for a show of Clubs and Spades pictures in the early 1980s. Although clubs and spades images appear often in his work from his earliest years, in the 1980's, in the middle of his Ocean Park series, he devoted himself to the exploration of these images. A black folding chair that was in his studio

FIGURE 15. Richard Diebenkorn's Ocean Park studio wall with clubs and spades works on paper, c. 1981. Photo © Marina Schinz.

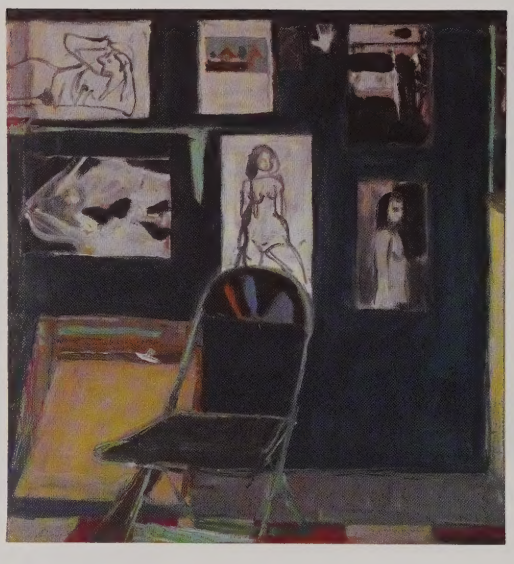

FIGURE 16. (Left). **RICHARD DIEBENKORN,** ***Window,*** 1967, oil and graphite on canvas, 92 x 80 in. (233.7 x 203.2 cm). Coll. Cantor Arts Center, Stanford Univ. © Richard Diebenkorn Foundation.

FIGURE 17. RICHARD DIEBENKORN, ***Studio Wall,*** 1963, oil on canvas, 45 ⅜ x 42 ½ in. 115.3 x 108 cm). Coll. U.C. Berkeley Art Museum and Pacific Film Archive. © Richard Diebenkorn Foundation.

FIGURE 18. Richard Diebenkorn's Healdsburg studio floor covered with paint palettes on paper plates, 1993. Photo © Kathie Longinotti.

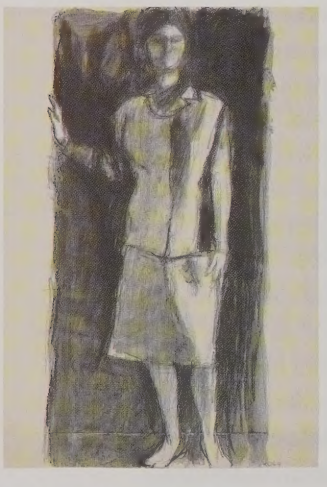

FIGURE 19. RICHARD DIEBENKORN, ***Untitled,*** 1964, ink, ballpoint pen, and graphite on joined paper, 18 ⅜ x 12 ½ in. (46.7 x 31.8 cm). © Richard Diebenkorn Foundation.

appears in various iterations in multiple paintings **(FIGS. 16 & 17).** For a palette he used paper plates **(FIG. 18).**

Both Matisse and Diebenkorn painted what was around them, so it is no surprise that studio paintings figure prominently in their work. I remember seeing my father work in his studio a few times, mostly when I was quite young. He was very physically involved with the paint and the canvas. There would be a lot of contemplation and then an aggressive, active involvement with the work. His hands were strong, and when he painted, he used their strength somehow to express his ideas.

If the proportion of the paper or canvas didn't seem right anymore, he would add on extensions. So, in this drawing of my mother, he became dissatisfied that there was no room for her feet and glued on paper at the bottom to be able to include them **(FIG. 19).** Often it seemed that the *process* of the patch or extension was as important as the drawing itself. There are many drawings and paintings that have been extended in this way.

Perfection wasn't high on his list of qualities to which one should aspire. He liked things that had a past, which showed a previous form or scar. He didn't erase much, but left pentimenti for contemplation.

People used to send him exotic or homemade paper, which he rarely used. He wasn't interested in fancy paper. He liked classic drawing paper which was available at any art supply store, and he liked paper with a past. He used up scraps from discarded drawings, the backs of advertisements, class schedules, the backs of my homework – anything lying around. Paper was considered a valuable commodity. The three works on the right in **FIGURE 20** were done on top of extra posters from his drawing show at Stanford in 1964. One of the actual posters is shown on the far left of the image. (The original drawing featured in the poster is now in the Baltimore Museum of Art.)

My mother was a terrific model and clearly my father's muse. He would say to her, "Would you hold that position" as she was in conversation with someone, or reading, or drinking a cup of coffee

FIGURES 20A-D. From left to right: **RICHARD DIEBENKORN,** 1964 Stanford Drawing Show exhibition poster created from a 1963 drawing. **20B.** ***Seated Woman,*** c. 1964, gouache on the poster for 1964 Stanford exhibition, 22 ¼ x 14 ⅜ in. (56.5 x 36.5 cm); **20C.** ***Untitled,*** c. 1964, gouache on the poster for 1964 Stanford exhibition, 22 ¼ x 14 ⅜ in.; **20D.** ***Untitled,*** 1964, gouache and charcoal on the poster for 1964 Stanford exhibition, 22 ⅜ x 14 ⅜ in. © Richard Diebenkorn Foundation.

or a glass of wine, and she would hold it in a lovely lifelike way. I am still in awe. A painting of her **(FIG. 21)** that was lent to the show in San Francisco and normally resides at the National Gallery of Art in Washington shows my mother in their front yard in Santa Monica.

Unlike Matisse's daughter, Marguerite, I was not a good model. There aren't a lot of drawings of me, and there are no paintings. My father said that my qualities were expressed in movement – that I became dead when posing. Furthermore, I didn't like it.

Following are some general comments about the way that my father worked. Although he drew from models, the subjects of his paintings and some of his works on paper were primarily done from memory. A few pieces are actually called imaginary landscapes, but nearly all his representational landscapes and interiors stem from his mind – influenced greatly by his surroundings to be sure, but often repurposed and rearranged.

He almost never did preparatory drawings for a painting, but he often referred to, or was informed by, drawings or parts of drawings that he had previously made. Nor did he work from photographs, although I have found newspaper or magazine photos that he had cut out because they interested him. Some part of the photo may appear as a gesture or shape in a painting.

While all artists change things, my father was interested in the evidence of the changes – the pentimenti – that a work went through as it evolved.

For a man who appreciated the continuum and the interconnectedness of the history of art as highly as anyone I've ever met, my father valued his own autonomy very much. He didn't like labels. He resisted being a member of a movement. This very labeling, I think, sometimes seemed to cause him to explore some variant or new way of looking. Although it seemed that in some way the San Francisco Bay Area became visually used up for him in the mid-sixties, thus prompting the move to Los Angeles, I think he may also have

FIGURE 21. RICHARD DIEBENKORN, ***Seated Figure with Hat,*** 1967, oil on canvas, 57 ¾ x 61 ¾ in. (146.7 x 156.8 cm). Coll. National Gallery of Art, Washington, DC. © Richard Diebenkorn Foundation.

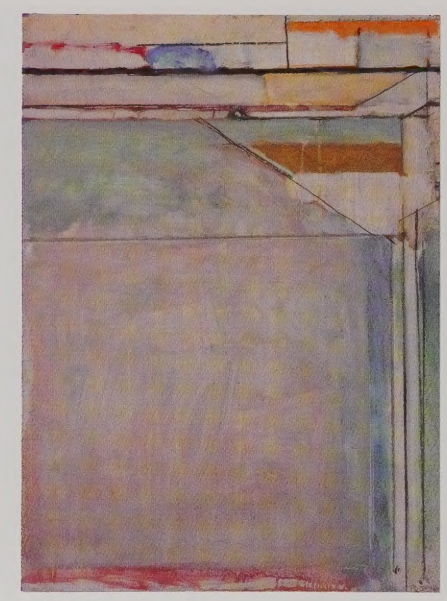

FIGURE 22. RICHARD DIEBENKORN, ***Ocean Park #93,*** 1976, oil on hardboard, 29 x 21 in. (73.7 x 53.3 cm). © Richard Diebenkorn Foundation.

perceived Los Angeles as having a broader variety of painting – that he would be one of many different individual painters rather than a member of a movement or school. He didn't think of himself as a California painter, but as a painter. He objected to being pigeonholed.

The first time I saw one of the Ocean Park pictures **(FIG. 22)** was quite a shock. In 1968 my husband and I were visiting my parents in Los Angeles, and my father asked us if we would like to go to the studio. The last works we had seen had been representational. There was no sense from him that we would be seeing something utterly new. It was not only that the paintings were "abstract," because we were familiar with his previous abstract works. I am really referring to the mental and visual vocabulary necessary to understand something unexpected and indeed, unimagined. He probably enjoyed our surprise and our loss of words. Gradually as we relaxed and looked, and stopped trying to place this work in any category, we began to see and to understand and, ultimately, to appreciate it enormously. It was a very special day. He of course continued in that abstract vein.

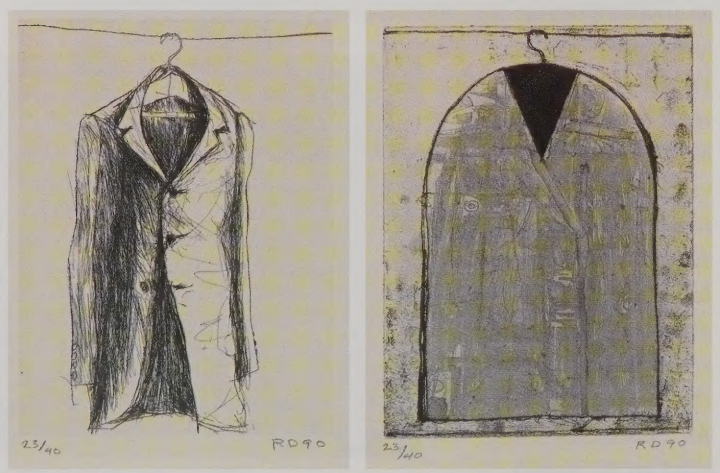

FIGURE 23A and **B. RICHARD DIEBENKORN, A (left):** ***Coat I,*** 1990, etching, 8 ½ × 6 ½ in. (21.6 × 16.5 cm) plate, 17 1/2 × 13 1/2 in. (44.5 × 34.3 cm) sheet. **B (right):** ***Coat IV,*** 1990, aquatint, soft ground etching, and etching with scraping, 8 ½ × 6 ½ in. (21.6 × 16.5 cm) plate, 17 ½ × 13 ½ in. (44.5 × 34.3 cm) sheet. © Richard Diebenkorn Foundation.

An early drawing by my father of his Marine jacket relates strongly to historical works of other artists. It also relates to some of his drawings of coats in the 1960s, and to his later etchings of coats (ranging from realistic to abstract) for the Arion Press book of Yeats' poetry, published shortly before he died **(FIG. 23).**[2] The symbol of a coat on a hanger comes from a favorite Yeats poem, "15 Apparitions," concerning approaching death, which contains the lines:

> 15 Apparitions have I seen;
> The worst a coat upon a coat hanger.

My father basically painted 365 days of the year. Really he was always working, because he was always looking and deeply noticing even when he seemed to be doing something else. "Recreation" was basically uninteresting to him, so the ski trips and the trips to Hawaii that many of my California friends experienced were not a part of our life. But we drove across the country a couple of times and my father took summer teaching jobs in Colorado and in Los Angeles, where we rented someone's house and had a new life for brief periods. But he went to the studio daily as usual.

He and my mother took several trips to Europe, to see paintings there and to visit friends, and once as State Department emissaries for the arts to the Soviet Union. *Recollections of a Visit to Leningrad* and *Large Still Life* **(FIGS. 24 & 25)** are clearly an homage to the Matisse paintings he and my mother saw, tucked away in the Hermitage and Pushkin museums, on that absolutely thrilling trip. The end

2 *The Poems of W. B. Yeats,* selected and introduced by Helen Vendler, and with six etchings by Richard Diebenkorn (Arion Press, 1990).

FIGURE 24. RICHARD DIEBENKORN, ***Recollections of a Visit to Leningrad,*** 1965, oil on canvas, 73 x 84 in. (185.4 x 213.4 cm). Private coll. © Richard Diebenkorn Foundation.

FIGURE 25. RICHARD DIEBENKORN, ***Large Still Life,*** 1966, oil on canvas, 64 ½ x 70 ¼ in. (163.8 x 178.4 cm). Coll. The Museum of Modern Art, NY. © Richard Diebenkorn Foundation.

FIGURE 26. RICHARD DIEBENKORN, ***Untitled,*** 1970, acrylic and ink on graph paper, 15 ¾ x 11 in. (40 x 27.9 cm). Given to Gretchen Diebenkorn Grant on her 30th birthday. © Richard Diebenkorn Foundation.

of my father's life and the end of Matisse's life had a similar design as well. My father was unable to get to his studio, so we set him up with a place in the mudroom of his house where he could work. He did some etchings and lithographs and a few drawings. He worked a lot with pieces of colored paper, which he placed on a maquette tacked up on the wall or sometimes on a board in his lap. He was still wanting to express his ideas and was impatient with his limitations, which came far too early in his life. He was only 70 when he died.

I think of my father's work as a series of intimate spaces into which the viewer is allowed to enter and to experience. There is a sense of order in even his most chaotic works that calms me and pleases me at a very basic level.

When he died, someone said that he had a sense that my father had entered into the place that is presented to us in his Ocean Park paintings and drawings. That is where I like to think of him too. **FIGURE 26** is a drawing he gave to me on my 30th birthday. I have been seeing it first thing every morning since he gave it to me.

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IFAR VINDICATED IN SUIT TO FORCE IT TO REVIEW AND DECLARE PAINTING AUTHENTIC

THOMAS R. KLINE and ANJU UCHIMA*

In a recent case, *LaRiviere v. Williams et al.*,[1] IFAR — the International Foundation for Art Research — protected the independence of art experts to render their opinions freely, and to choose whether or not to render opinions at all, concerns critical to the integrity of the art world.

Questions about the authenticity of art works and the widespread proliferation of fakes and forgeries, from periods ranging from antiquity to the contemporary era, have thrown the art market into turmoil, with an ever-increasing number of inauthentic works eroding the public's confidence in the integrity of the marketplace. Much consternation has focused on the propagation of forgeries by previously reliable galleries that may have slipped through the cracks, at least in part, because of experts' fear of litigation. A related problem is meritless lawsuits against authenticators brought by owners of possibly fraudulent artworks who claim injury over their inability to have their pieces declared authentic. In the view of Nancy Mowll Mathews, former president of the Catalogue Raisonné Scholars Association, "the staggering rise in art prices has transformed the cost-benefit analysis of suing at the same time that fraud has become more profitable."[2]

"IFAR had never even seen the actual painting, much less studied it or formally agreed to do so. Nor had IFAR rendered any opinion as to its authenticity."

FIGURE 1. ***Vertical Infinity.*** Oil on canvas, 11" x 26". Rejected twice by the Pollock-Krasner Authentication Board and the subject of a recently dismissed lawsuit against IFAR.

The trouble and expense of defending these actions has no doubt had a chilling effect upon the willingness of art experts to opine on the authenticity of artworks, but the opinion of independent experts is critical to preserving the integrity of the art market from fakes and forgeries. Although lawsuits against art authenticators have generally involved claims for damages, art owners have on occasion sought to obtain a court order compelling authenticators to render an opinion declaring the piece in question to be a genuine work. Such a claim, if successful, would be particularly deleterious to art authentica-

* Thomas R. Kline is an art law attorney and Partner at Cultural Heritage Partners, PLLC in Washington, D.C. and New York. Anju Uchima is an attorney, formerly Of Counsel at Andrews Kurth Kenyon LLP and, as of November 2017, at Pearlstein McCullough & Lederman LLP.

1 *LaRiviere v. Williams et al.*, Index No. 102006/2015 (Sup. Ct. N.Y. Co. April 7, 2016), aff'd, 2017 N.Y. App. Div. LEXIS 3557 (1st Dep't May 4, 2017).

2 Patricia Cohen, "In Art, Freedom of Expression Doesn't Extend to 'Is It Real?'," *The New York Times* (June 19, 2012).

tors and the buying public, as it would rob experts of the freedom and independence essential to their work and would foist on the market works authenticated by judicial order alone.

Recently, such a claim was made against IFAR. An individual claiming to own an authentic Jackson Pollock forced the organization to defend itself against a frivolous lawsuit seeking to compel IFAR not only to examine the work and undertake authentication research, but to *declare* it an authentic Pollock and also to publish that in the *IFAR Journal.* IFAR, however, had never even seen the actual painting, much less studied it or formally agreed to do so. Nor had IFAR rendered any opinion as to its authenticity. The owner, Kenneth LaRiviere, had previously failed to obtain relief in a similar case sixteen years earlier against the Pollock-Krasner Authentication Board (the "PK Board") concerning the very same canvas, entitled "Vertical Infinity" **(FIG. 1).** After studying the painting, the PK Board declined to authenticate it. Moreover, the PK Board had rejected the same painting two years earlier, when it was submitted by a different owner.

IFAR, which has maintained an Art Authentication Research Service since its founding in the late 1960s, was connected to the work *only* because it had declined a request by plaintiff LaRiviere to pursue authentication research on the painting. IFAR did so after discovering that, years earlier, the PK Board, then the definitive authority on Pollock's *oeuvre,* had studied the painting and concluded, not once, but twice, that "Vertical Infinity" was not a genuine Pollock. Indeed, LaRiviere's 1999 suit against the PK Board over its refusal to authenticate the work (*LaRiviere I*), was dismissed in a sharply-worded court opinion that rejected his assertions and assessed monetary sanctions against him and his counsel for litigating a case that lacked any factual or legal basis. In the lawsuit against IFAR ("*LaRiviere II*"), which was filed in November 2015 and decided in 2017, LaRiviere's attempt to obtain, through a mandatory injunction, what amounted to an authentication "by fiat," rested on no legitimate legal basis. Moreover, by seeking to make the court the arbiter of authenticity, LaRiviere's suit against IFAR carried disastrous policy implications for art authenticators and the visual arts in general. This is why IFAR chose to defend itself vigorously.

THE EARLIER ACTION AGAINST THE PK BOARD (*LARIVIERE I*)

In 1999, when LaRiviere submitted "Vertical Infinity" for authentication, and the PK Board concluded, again, that the painting was not by Pollock, LaRiviere filed an action against the PK Board and its members in New York State Supreme Court for breach of contract, *LaRiviere v. Thaw*[3] ("*LaRiviere I*"). He asserted that the PK Board should have authenticated the painting based on the evidence he had provided, which included no expert opinion or any other independent art scholarship. The court noted, among other things, the paucity of LaRiviere's proof as well as the fact that LaRiviere's allegations concerning his acquisition of the painting and the painting's provenance were squarely at odds with the actual evidence, which included Pollock's misspelled name in an inscription on the verso of the painting.[4] The court dismissed the action, citing "overwhelming proof that every single one of the plaintiff's claims are not only without any merit whatsoever, but constitutes a laughable and clumsy attempt at fraud." It not only awarded judgment to the defendants on their counterclaim for LaRiviere's breach of the hold harmless provision in the parties' contract, but also assessed monetary sanctions against LaRiviere and his counsel in view of the fact that "the defendants ha[d] been forced to expend substantial money to defend against this childish plot."

THE ACTION AGAINST IFAR (*LARIVIERE II*)

Fast forward fifteen years to 2014: LaRiviere, undeterred by the result in *LaRiviere I,* resumed his

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3 *LaRiviere v. Thaw,* 2000 WL 33965732 (Sup. Ct. N.Y. Co. June 26, 2000).

4 For a discussion of *LaRiviere I,* see Ronald Spencer, "A Legal Decision in New York Gives Experts Protection for their Opinions on Authenticity," *IFAR Journal,* Vol. 3, no. 2 (Spring 2000), p. 22ff.

quest to have "Vertical Infinity" authenticated as a Pollock, this time through IFAR's Art Authentication Research Service. As set forth on IFAR's website and in other materials, that service seeks to provide authoritative, objective and unbiased opinions as to attribution/authenticity, based on IFAR's own specialized research and close examination by distinguished experts — scholars, connoisseurs, conservators, and scientists — regarding artworks submitted and accepted for study in accordance with IFAR's procedures.

Significantly, IFAR, in light of its limited resources as a small nonprofit lacking any endowment, can accept only a modest number of artworks each year for authentication research and, accordingly, cannot guarantee acceptance for research of all works submitted. A two-stage process is involved: the first, a Preliminary Inquiry in which IFAR determines whether to accept the work for further research, and in connection with which the requester must submit necessary documentation, pay a modest nonrefundable preliminary fee and enter into a signed contract with IFAR; and the second, the more intensive stage, which entails the authentication research and examination.

"By seeking to make the court the arbiter of authenticity, LaRiviere's suit against IFAR carried disastrous policy implications for art authenticators and the visual arts in general. This is why IFAR chose to defend itself vigorously."

To initiate the first stage, but prior to signing the IFAR contract or paying the fee, LaRiviere (who gave his name as "Rivers") sent a file of materials to IFAR concerning the painting. It consisted mainly of the materials he had earlier used in *LaRiviere I.* IFAR, realizing that this was a work that the PK Board had previously determined was not a Pollock, declined to go forward with authentication research. IFAR returned LaRiviere's materials and never saw the painting.

In November 2015, LaRiviere commenced *LaRiviere II* against IFAR, as well as Anthony Williams and Dr. Sharon Flescher, IFAR's Chairman and Executive Director, respectively (collectively, "IFAR"). LaRiviere brought his case in the same court in which he had lost *LaRiviere I.* Unlike in the earlier action, LaRiviere proceeded *pro se,* unrepresented by counsel. In his complaint this time, LaRiviere sought a mandatory injunction directing IFAR, among other things, to issue an "Official Document" attributing the painting to Pollock and to "promulgate its attribution in the *'IFAR Journal'* at its earliest next publication." He alleged that IFAR's refusal to authenticate the painting caused him damage by "significantly diminishing its proper worth and value," such that he could not "sell, transfer, or donate" the painting as an authentic Pollock.

LaRiviere, however, could not specify the source of any legal duty on IFAR's part to authenticate his painting. He could only claim in a conclusory manner that the defendants had "breached their duty and … failed to maintain a Standard of Care as Researchers, Art Historians and Authenticators of 'Fine Art.'" This allegation was woefully inadequate to set out a duty required by law.

The flaws in LaRiviere's complaint raised a number of legal issues that provided possible bases for dismissal. First, of what effect was the finding in the earlier case that LaRiviere's key claim of entitlement to authentication was "without any merit whatsoever"? As *LaRiviere I* involved the same central issue – the authenticity of "Vertical Infinity" – and LaRiviere had a full and fair opportunity to litigate that question in the earlier lawsuit, the doctrines of *res judicata* and collateral estoppel barred LaRiviere from asserting his claim again. Second, what legal basis supported LaRiviere's effort to have the court compel IFAR to attribute the painting to Pollock? Under controlling case law,[5] the only legal obligation IFAR would bear would be one "grounded in contractual duties, tort duties, or statutory duties," none of which LaRiviere was able to cite. Further, in comparison

5 *Thome v. Alexander & Louisa Calder Found.,* 70 A.D.3d 88 (1st Dep't 2009).

to other cases in which disappointed art owners asserted claims against art authenticators, authentication boards and artists' foundations, IFAR's connection to "Vertical Infinity" was particularly thin; IFAR had not even agreed to study the work, much less issued a determination as to the painting's authenticity. Nor had IFAR even seen the work. Indeed, LaRiviere, in complaining that IFAR had refused to authenticate "Vertical Infinity," was improperly conflating two distinct concepts, that of reaching an agreement that IFAR would pursue authentication research, on the one hand, and the actual research, authentication, and opinion, on the other. Under IFAR's two-stage procedure, the first in no way guarantees the second. In addition, the Pollock-Krasner Authentication Board had already twice determined the painting not to be a Pollock, raising the question of how many times the authenticity of a work must be denied before the issue of its genuineness may be laid to rest.

What would be the consequences, moreover, of forcing IFAR, through a mandatory injunction, to issue a positive authentication of the painting? Such relief would require the court to render a finding of authenticity on its own, a determination for which it lacks the necessary expertise. Such a finding, unsupported by specialized scholarship and informed judgment, would be of no value as it would not be recognized in the marketplace. Further, if LaRiviere could force IFAR to rubberstamp his claim of authenticity, IFAR, an organization dedicated to integrity in the visual arts, would suffer enormous harm to its hard-earned reputation for independent and objective scholarship in researching the attribution and authenticity of works of art. Such an outcome would also set a disastrous precedent for art authentication in general, jeopardizing the freedom of other art experts to render opinions based on their own research and judgments and inhibiting them from providing independent determinations as to authenticity. Putting such pressure on experts, in turn, would negatively impact the art market by sowing uncertainty in distinguishing between authentic works and fakes.

IFAR moved to dismiss *LaRiviere II* on these grounds. It also sought an award of sanctions for frivolous litigation, understanding, however, that such an award was unlikely in view of the tendency of courts to treat pleadings of *pro se* litigants with leniency. In his briefing in opposition to the motion, LaRiviere, confronted with controlling case law requiring a contractual, tort or statutory duty on IFAR's part to authenticate the painting, sought to create duties out of whole cloth, contending, with no legal basis, that IFAR had a "moral" obligation to authenticate the painting and a duty that stemmed not only from its status as an organization of "art researchers, art historians and authenticators," but from the Code of Ethics of the College Art Association (CAA). Portraying himself as a private attorney general, LaRiviere claimed to be enforcing, "in the interest of the art world" and "the community as a whole and the archives of American art history," the CAA Code of Ethics, a code that is intended as a guideline, with no force of law, for promoting industry practice.

"LaRiviere sought a mandatory injunction directing IFAR, among other things, to issue an "Official Document" attributing the painting to Pollock and to "promulgate its attribution in the *'IFAR Journal'* ..."

The court granted IFAR's motion and dismissed *LaRiviere II,* finding that LaRiviere had failed to state a legal claim; he had set forth no duty on IFAR's part to authenticate the painting, nor could the Court find any.[6] It did not award sanctions, however. LaRiviere appealed the dismissal, arguing the same points he had argued before the lower court. Admitting that he had no case law to support his position that IFAR could be compelled to authenticate the painting, he railed against an environment created by the "art establishment" in which "an art owner ending up in court has

6 *LaRiviere v. Williams,* Index No. 102006/2015, Motion Sequence 001 (Sup. Ct. N.Y. Co. April 7, 2016).

little or no chance of winning while pleading up against omnipotent and sacrosanct art scholars and their lawyers." The appellate court unanimously affirmed the dismissal, agreeing with the lower court that LaRiviere had failed to set forth "any legal obligation that defendants had to take any steps to authenticate [the painting]." Setting an additional valuable precedent, the appellate court also determined that the *LaRiviere I* court's rejection of LaRiviere's claim to be entitled to authentication of the painting foreclosed him from making that claim against IFAR and relitigating the point.[7]

"The Pollock-Krasner Authentication Board had already twice determined the painting not to be a Pollock, raising the question of how many times the authenticity of a work must be denied before the issue of its genuineness may be laid to rest."

THE ACTION IN CONTEXT

The failed suit against IFAR should be seen against the backdrop of efforts in New York State in recent years to enhance protections for art authenticators who render "independent, good-faith opinions about the authenticity, attribution and authorship of works of fine art"[8] from meritless lawsuits brought against them by art owners. Such lawsuits, it is claimed, have had a chilling effect on art experts. The prospect of being forced to spend substantial legal fees defending legal actions is said to have discouraged experts from providing the benefit of their specialized knowledge in rendering opinions concerning authenticity. Indeed, a number of artists' foundations and estates have ceased their authentication activities. The work of such art experts, however, is critical to the integrity of the art market.

A notable effort to increase protections for art authenticators is Bill S1974, passed by the New York Senate and delivered to the New York Assembly (A5120) in 2017 (similar to other efforts over the previous two years), which would amend the New York Arts and Cultural Affairs Law to, among other things, require plaintiffs to plead their claims with particularity and permit the award of fees and costs to defendants for "good and just cause."[9]

The IFAR action, *LaRiviere II*, was an extreme example of a meritless lawsuit against an art authenticator and a stark demonstration of how an art owner can abuse judicial resources and, through empty claims and arguments, cause trouble and expense to the authenticator. The problems with LaRiviere's claims against IFAR were many, including the complete lack of legal authority supporting his positions; the disastrous policy implications of the relief LaRiviere sought; IFAR's attenuated connection to the painting; the two previous denials of authenticity by the PK Board; and the emphatic rejection of LaRiviere's claims in *LaRiviere I*.

While the outcome of *LaRiviere II* will, it is hoped, help discourage individuals from asserting meritless claims against authenticators in the future, *LaRiviere II* does accentuate the need for some kind of statutory reform in New York (and elsewhere), such as allowing an award of fees to the prevailing party in suits against authenticators. As frivolous as *LaRiviere II* was, it implicated vital interests, including safeguarding the independence of art experts to enable them to render their opinions freely, or not render an opinion. The decisions by the New York State trial and appellate courts vindicated those interests and IFAR's.

7 *LaRiviere v. Williams*, 2017 N.Y. App. Div. LEXIS 3557 (1st Dep't May 4, 2017).

8 Report on Legislation by the Art Law Committee of the New York City Bar Association in support of A.1018-A/S. 1229-A (reissued February 2016).

9 See also Sharon Flescher, "Third Time *Not* the Charm (So Far) for NY State Bill Protecting Art Experts," *IFAR Journal*, Vol. 18, no. 1 (2017), p. 13.

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ET TU BRUTE: ARTISTS' DISAVOWALS IN THIS MOMENT OF AMERICAN POLITICS

LENA SALTOS*

"A seemingly new phenomenon has arisen, however, whereby an artist does not simply create an overtly political piece of art, but rather disclaims authorship of a prior work of art as a political statement."

Artists have often been at the vanguard of political movements and examples of political art are manifold. Diego Rivera, Hans Haacke,[1] Chinese dissident Ai Wei Wei, and Banksy, the anonymous street artist whose prolific works of social and political commentary have appeared in the United States and England, are exemplary in this regard.

A seemingly new phenomenon has arisen, however, whereby an artist does not simply create an overtly political piece of art, but rather disclaims authorship of a prior work of art as a political statement. A prime example of such a "political disavowal" is the recent disclaiming by Appropriation artist Richard Prince of his own painting of an Instagram photograph of "First Daughter" Ivanka Trump[2] **(FIG. 1)** as a protest against the election of her father. As the polarization of politics in America continues to deepen, a greater number of artists are likely to follow Prince's example, which raises the question of how the legal and art community should respond to an artist's absolute right to disavow his or her works for political reasons. The issue forces us to reexamine the balance between the rights of artists and the rights of the collectors whose works, in many instances, are stripped of value following such a disavowal.

Disavowals have historically been nonpolitical. As will be discussed in more detail below, some were undertaken for personal reasons, as with the artists Balthus and Robert Morris; some to preserve the integrity of an artist's *oeuvre*, as with Cady

FIGURE 1. RICHARD PRINCE. *Ivanka Trump Instagram,* 2014. Printed painting on canvas disavowed by the artist.

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1 Haacke's *oeuvre,* which spans various media and several decades, critiques social and political systems, while focusing in particular on the influence of corporate interests on art.

2 The painting is currently owned by Ivanka Trump.

Noland; still others, to prevent the perpetuation of fraudulent works, as with Donald Judd.

The question of whether such disavowals should be accepted by the art community and the world at large has usually been discussed against the backdrop of "moral rights," codified in the United States by the Visual Artists Rights Act ("VARA"), enacted by Congress in 1990. The U.S. strain of moral rights, which is much narrower than the European *droit moral,* includes the artist's right of integrity – i.e. the right to safeguard a work of visual art from a modification that prejudices the artist's reputation – and, the focus of this article, the right of attribution – i.e. the right to claim ownership of a work the artist created and to disclaim a work the artist did not create. Moral rights afford visual artists a powerful set of rights, to the point of allowing artists to control what the owner of that work does long after the artist has sold it, potentially conflicting with the property rights of the owners of the artwork itself.

A BRIEF OVERVIEW OF ARTISTS' DISAVOWALS

Disavowals by artists have historically tended to fall into three main categories. As referenced above, the first concerns disavowals motivated by personal animus. The second is the oeuvre-purifying disavowal, in which an artist disclaims a work to prevent harm to his or her reputation.[3] The third is the fraud-negating disavowal, where the artist seeks to prevent the perpetration of fraud.

In general, courts and the art world have taken a dim view of disavowals by an artist based on personal animus, as evidenced by *Arnold Herstand & Co., Inc. v. Gertrude Stein, Inc.,* a seminal 1995 case in which the New York State appeals court held that an artist's repudiation of a work did not, in itself, establish, as a matter of law, that the work was inauthentic. Defendant Gertrude Stein Gallery contended that a work **(FIG. 2)** that Balthus repudiated as a forgery – likely out of animus against his former wife who had earlier sold the drawing – was in fact authentic.[4] The plaintiff, a competing gallery seeking to rescind its purchase of the drawing from Gertrude Stein on grounds of mutual mistake as to its authenticity, argued that it is "self-evident [that] the artist is the definitive expert on what is his/her own work. When a living artist repudiates a work as a forgery or a fake, the work becomes unmerchantable and unsalable."[5] The court held that the issue of authenticity could not be resolved on summary judgment in favor of the plaintiff because the statements of Balthus alone were not determinative on the issue of authenticity. The repudiation by Balthus, who was not deposed or cross-examined, were hearsay

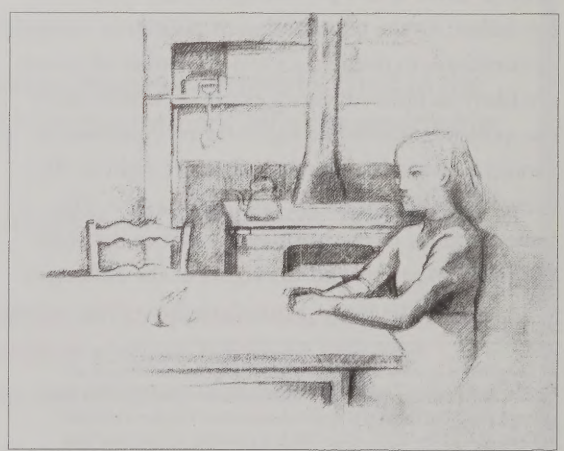

FIGURE 2. BALTHUS (?). ***Colette de Profil,*** c. 1954. Drawing disavowed by the artist, which factored in a lawsuit in the 1990s.

[3] While conceptually distinct from an artist's disavowal, it is worth mentioning here that there is an equally rich and long history of artists physically destroying prior works in an effort to purify their *oeuvre.* This purifying practice is similar to artist disavowals in that the artist decides what does and does not belong in his/her catalogue raisonné. It differs from a disavowal, however, in that the artist does not deny authorship and pronounce the work fake. For example, Gerhard Richter is famous for systematically culling his *oeuvre* so that only those works he deems most worthy continue to survive. See Allison McNearney, "Why Artist Gerhard Richter Destroys His Own Art," *The Daily Beast* (Nov. 27, 2016). Richter's practice is not recent – he first began destroying his works as a student, creating a fire in the courtyard of his academy. Today, eighty-nine works are listed as destroyed on his website, which serves as his catalogue raisonné. Similarly, Agnes Martin, Claude Monet, Robert Rauschenberg, and Jasper Johns all destroyed art that they created at the beginning of their careers. See Ann Landi, "Auto-Destructive Tendencies," *ARTnews* (Dec. 24, 2012). Artists John Baldessari and Susan Hiller have destroyed their works and used the ashes or torn canvases to create other pieces.

[4] *Arnold Herstand & Co., Inc. v. Gertrude Stein, Inc.,* 626 N.Y.S. 2d 74, 211 A.D.2d 77 (1995).

[5] *Id.* at 75.

FIGURE 3. ROBERT MORRIS. *Litanies,* 1963. Lead over wood with steel key ring, twenty-seven keys, and brass lock. 12″ x 7 ⅛″ x 2 ½″. The Museum of Modern Art, NY. Gift of Philip Johnson. ©Robert Morris/ARS NY. Photo: MoMA.

and thus deficient on evidentiary grounds.[6] But even aside from this deficiency, by crediting the Gertrude Stein Gallery's arguments that Balthus had a reputation for repudiating works solely "to punish former lovers or dealers,"[7] the Court determined that an artist does not possess the absolute power to disclaim his work when such disavowals may be based on personal animus.

Sometimes collectors are not deterred by an artist's disavowal. When the artist Robert Morris repudiated his 1963 work *Litanies* **(FIG. 3)** after purchaser Philip Johnson, the noted architect and collector, was late in remitting payment, he created a notarized statement to negate the "aesthetic quality and content" of the original work.[8] This disavowal did not, however, deter Johnson from later purchasing the additional Morris work *Document* (1963). Both works are now in the collection of the Museum of Modern Art in New York, which notes that "Johnson then purchased 'Document,' thereby accepting the loss of the value of his first acquisition."[9]

Falling into the second category, artist Cady Noland illustrates the oeuvre-purifying disavowals, which are more broadly accepted in the art world, albeit still controversial. In 2011, Noland disclaimed authorship of her aluminum print, *Cowboys Milking* **(FIG. 4),** shortly before it was to be auctioned at Sotheby's, after she discovered that the aluminum corners of the work had been bent during restoration. Invoking her rights under VARA, Noland argued that the damage was prejudicial to her reputation. After Sotheby's withdrew the artwork from auction, the consignor sued the auction house alleging breach of their consignment agreement.[10] The consignment agreement, however, was broadly worded and granted Sotheby's the right to withdraw the artwork owned by the plaintiff from auction if Sotheby's, in its sole judgment, had any doubt as to the work's "attribution" as defined in VARA. Accordingly, the court held that Sotheby's did not breach the contract.

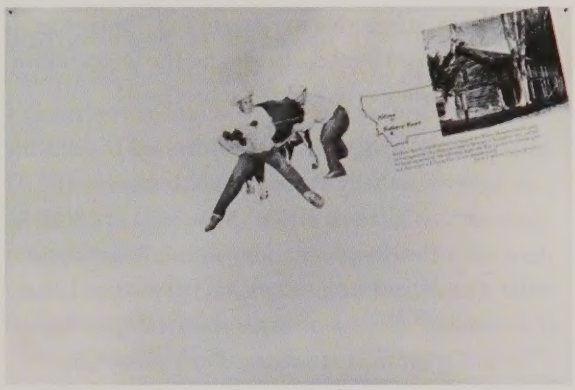

FIGURE 4. CADY NOLAND. *Cowboys Milking,* 1990. Aluminum print, 48" x 72", disavowed by the artist.

The court did not decide the issue of whether VARA protected Noland's asserted disclaimer. Nevertheless, Noland's disavowal rendered the work inauthentic and unmarketable.[11] A relevant inquiry in this instance is whether VARA intended to reach so far as to allow a disavowal after conservation has occurred. While VARA provides for an exception to "ordinary wear-and-tear of the work due to the environmental factors and the passage of time," this carve-out did not prevent Noland from explicitly disavowing the work, despite a conservator's pro-

6 *Id.* at 76.

7 *Id.* at 78.

8 *Robert Morris: Document,* MoMA, https://moma.org/collection/works/79897.

9 *Id.*

10 *Marc Jancou Fine Art Ltd. v. Sotheby's, Inc.,* 107 A.D.3d 637, 637, 967 N.Y.S.2d 649 (2013).

11 Amy Adler, "Cowboys Milking, Formerly Attributed to Cady Noland," *Brooklyn Rail* (Mar. 4, 1016).

nouncement that the work was "in very good condition." It seems clear that VARA was not intended to protect disavowals such as these; however, its enactment has arguably muddied the waters in clarifying the right of artists to speak for the status of their works years – and even decades – after they leave their possession and ownership.

Falling into the third category, Donald Judd presents an example of a fraud-negating disavowal. Judd wrote a manifesto titled "Una stanza per Panza" denouncing collector Giuseppe Panza "for fabricating works from certificates incorrectly and without Judd's permission," contrary to their written agreement.[12] Although the value of Panza's collection, which includes Judd's work and the work of many other artists who disavowed the works they sold to him, is not in question, attempting to recreate and display the collection raised legal challenges for the Guggenheim Museum when it acquired the collection.[13]

Although the issue was left unaddressed in the case against Sotheby's after Noland's disavowal, the interplay between artists disavowals and VARA deserves a closer examination, especially as it provides a backdrop for a discussion below of political disavowals.[14] The 1990 Visual Artists Rights Act ("VARA"), codified at Section 106A of the Copyright Act, was intended to protect a visual artist's right of integrity and attribution.[15] While VARA resides in the Copyright Act, moral rights, which, as noted above, are European in origin, are more properly viewed as a distinct species of rights. Copyright law as it is generally understood refers to the economic rights conferred by copyright, such as reproduction, distribution, and public performance.[16] Copyright law protects the copyright owner's economic rights by monetarily compensating him or her for infringement. VARA by contrast protects the reputation of the author – who may not necessarily be the copyright owner – of a copyrighted work. Further, moral rights conferred under VARA, unlike the economic rights afforded under the Copyright Act, are not transferable (§106A(e)), and end with the life of the author (§106A(d)).

Artists like Balthus, Morris and Judd, who, in the instances above, disclaimed authorship of their works, can be understood to have relied on some version of an artist's right of attribution. With respect to the right of integrity, VARA entitles the author to prevent any "intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation" and to prevent destruction of a work of "recognized stature."[17]

While there is limited judicial authority on the matter, moral rights at least in theory confer very powerful rights. As New York University School of Law Professor Amy Adler observes in "Against Moral Rights," moral rights "severely curtail[]" the owner's property rights: "Moral rights allow an artist to control what you do with his work of art even after he has sold it and even if you are not in privity of contract with him."[18] While Adler's argument focuses on the right of integrity – the right to prevent modification and destruction of a work of visual art, her critique provides a lens into the question raised here: Should the law and art community protect artists' absolute power to pronounce their works fakes and render those works, at least in some instances,

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12 Julia Halperin, "Guggenheim Tackles Panza Problem," *The Art Newspaper* (Oct. 24, 2013).

13 *Id.*

14 A recently filed lawsuit by Cady Noland herself might allow for this opportunity. In July of 2017, Noland filed suit alleging that a collector and a group of conservators infringed on the copyright in her 1990 work *Log Cabin,* when the collector restored the work without Noland's consent. In addition to the copyright claim, Noland also alleged a violation of her rights under VARA and sought to disassociate her name from the "improperly restored" work. See news story, this issue of *IFAR Journal*, p. 6.

15 See 17 U.S.C. § 101 (defining a "work of visual art").

16 See 17 U.S.C. § 106 (enumerating the copyright owner's exclusive rights).

17 17 U.S.C. § 106A(a)(3).

18 Amy Adler, "Against Moral Rights," *California Law Review,* Vol. 97, no. 1 (2009), pp. 263, 264. It should be noted that the tension between moral rights and property rights long predates VARA. In 1934, Diego Rivera's mural at Manhattan's Rockefeller Center was chiseled off the wall after John D. Rockefeller Jr., who commissioned it, deemed the mural's depiction of Communist revolutionary Vladimir Lenin inappropriate. Diego challenged Rockefeller's right to remove the mural, asking in a letter, "If someone buys the Sistine Chapel, does he have the authority to destroy it?" See Allison Keyes, "Destroyed by Rockefellers, Mural Trespassed on Political Vision," NPR (Mar. 9, 2014).

unmerchantable? Assessed in the context of a new wave of political art, discussed below, the answer to that question, in this author's view, should be "no."

POLITICALLY MOTIVATED DISAVOWALS

As already noted, Richard Prince stands at the forefront of a new wave of political art in which artists convey political statements not through creating their work, but by disavowing their work. In early 2017 Richard Prince, in an admitted act of protest against then President-Elect Donald Trump, publically disavowed his appropriation-style artwork of Trump's daughter, Ivanka. The artwork, created, according to Prince, in 2014 after an art adviser requested that he make a painting based on a selfie that Ivanka Trump posted on her Instagram feed,[19] was intended to figure into Prince's Instagram-sourced series, "New Portraits," a collection of appropriated peoples' Instagram posts.[20] While Prince declined to name the art adviser who approached him, the work came to reside in the collection of Ivanka Trump.[21] Following the Presidential election, Prince disavowed the work, announcing through Twitter: "This is not my work. I did not make it. I deny. I denounce. This [is] fake art."[22]

Although Prince denied that the work was his authentic creation, he simultaneously admitted that he had been commissioned to create it, and that his denial was a form of political protest against the newly minted President. Under these circumstances, perhaps a court would have no difficulty finding that Prince did in fact create the work and may not, therefore, assert the right under VARA "to prevent the use of his … name as the author of any work of visual art which he … did not create."[23] *Herstand v. Stein* arguably leans in that direction, suggesting that an artist's repudiation of a work he or she created for personal reasons (such as political disagreement) does not transform that work into a fake. Of course, there is no judicial precedent on the issue.

Then again, it may not matter whether a judge renders a decision. If Cady Noland's *Cowboys Milking* is any indication, the issue of whether Prince's disavowal will render the work unmerchantable is likely to be resolved by a notoriously fickle art market.[24] In the case of *Cowboys Milking*, it was unclear whether VARA protected Noland's disclaimer. The art market, however, did not care. Noland's disclaimer instantly transformed *Cowboys Milking* into an unsalable work.

Compare Prince to one of his contemporaries, Arturo Di Modica, the artist behind the *Charging Bull* statue, which has become synonymous with Wall Street **(FIG. 5).** [25] In April 2017, Di Modica challenged the installation of *Fearless Girl* **(FIG. 6),** a roughly four-foot tall statue depicting a girl with her hands on her hips squaring off against Di Modica's bull.[26] *Fearless Girl*, which was unveiled on the eve of International Women's Day (March 8, 2017), was initially accompanied by a plaque inscribed: "Know the power of women in leadership. SHE makes a difference."[27] New York City Mayor Bill de Blasio praised *Fearless Girl* as a symbol of "standing up to fear, standing up to power."[28] But, that was *not* its intended purpose. The sculpture was commissioned by a Boston-based investment management fund, State Street Global Advisors, as an advertisement for the company's exchange-traded fund (SHE) that invests incompanies with female leadership.[29]

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19 Randy Kennedy, "Richard Prince, Protesting Trump, Returns Art Payment," *NY Times* (Jan. 12, 2017).

20 Brian Boucher, "Richard Prince Calls Work Sold to Ivanka Trump 'Fake Art'," *artnet News* (Jan. 12, 2017).

21 Kennedy, *NY Times, op. cit.*

22 Boucher, *artnet news, op. cit.*

23 17 U.S.C. 106A(a)(1)(B).

24 While historically, disavowals decrease the value of a work, some have speculated whether Prince's Twitter-fueled disavowal makes the work more, rather than less valuable. See, Kennedy, *NY Times, op. cit.*

25 Although created in 1989, *Charging Bull* still falls under VARA because the sculptor, Di Modica, did not transfer his rights as of the 1991 VARA effective date. VARA covers works created prior to 1991 still owned by the original author.

26 Jamiles Lartey, "'Charging Bull' Sculptor Calls for New York To Remove 'Fearless Girl' Statue," *The Guardian,* (April 12, 2017).

27 *Id.*

28 *Id.*

29 Op-Ed "Fearless Girl is an advertisement. The city should remove it," *Crain's New York* (April 17, 2017).

FIGURE 5. ARTURO DI MODICA. ***Charging Bull,*** 1989. Bronze. 11′2″ x 16′1″. © Arturo Di Modica. Installed in 1989 in Bowling Green in New York's Financial District.

FIGURE 6. KRISTEN VISBAL. ***Fearless Girl,*** 2017. Bronze. Ht: 4′2″. Photo courtesy Shutterstock. Installed March 2017 in Bowling Green opposite *Charging Bull.*

The timing of *Fearless Girl* has been the reason for its success: not only was the statue inaugurated on the eve of International Women's Day, but it also followed the proliferous women's marches in response to Donald Trump's inauguration. *Fearless Girl*'s positive reception – despite its inherently commercial roots – raises an interesting point in this discussion: the meaning of a work can be forged through various factors, including when the work is unveiled to the public or the general political backdrop. Curiously, the public has interpreted *Fearless Girl* as a work of social commentary and has blatantly disregarded its commercial roots; whereas, in the case of *Charging Bull,* the public has generally received the work as a symbol of capitalism and commercialism itself, when it was Di Modica's intention to inspire optimism in the financial markets at a time of financial crisis in 1989. He initially erected the work as guerrilla art. The fact that very different meanings can be perceived by artists, observers and critics raises the question as to whose meaning should be given the loudest voice. That is, should the prevailing meaning of a work of art always be that of the artist? In response to *Fearless Girl,* Di Modica argued that the "inescapable implication" was that his work had become "a force against doing what's right,"[30] dramatically changing the meaning of his work.

According to Di Modica, the installation of *Fearless Girl* changed the intended meaning of his work from "freedom, world peace, strength, power and love" to "a negative force and a threat."[31] He now seeks to enforce his VARA rights to "prevent any intentional distortion, mutilation or other modification of that work which would be prejudicial to [his] reputation."[32] Like Richard Prince, Di Modica seeks to use his art to advance a particular political message. Unlike Prince, whose disavowal of authorship can be understood as relying on some understanding of the artist's right of attribution, Di Modica invokes the right of integrity. In demanding the removal of *Fearless Girl,* Di Modica asserts that a change in the intended meaning of his work constitutes a "modification" for purposes of VARA.

On the one hand, Di Modica's invocation of moral rights arguably fits more squarely in the framework of VARA than Prince's. Prince now flatly denies that he is the author of a work he actually created and doesn't deny creating – a position that no court has endorsed. On the other hand, Di Modica's challenge raises several questions. Should non-physical transformation of a work constitute a "modification" for purposes of VARA? Should the artist's intent dictate the meaning of a work? Assuming

30 *Id.*

31 *Id.*

32 *Id.;* 17 U.S.C. § 106A(a)(2).

alteration of a work's intended meaning constitutes a "modification," just how far, physically and theoretically, does Di Modica's argument travel? How far can an artist reach into a work's surroundings in order to preserve the work's intended meaning? Assuming we care about moral rights, what about the moral rights of the artist behind *Fearless Girl*? [33] Although Di Modica's argument fits into the VARA framework, taken to its logical conclusion, it still gives artists tremendous power to interfere with people's property rights. Under Di Modica's argument, what would stop a Diego Rivera from calling for the removal of a luxury condo because its capitalist overtones modifies the communist message of his mural?

CONCLUSION

So we now return to the primary question, should the law and art community protect an artist's absolute power to disavow authorship of his or her work for political reasons? Arguably, political disavowals are more closely akin to personal disavowals as they relate to the relationship between the artist and the owner of the artwork, and are not related to the actual artwork itself. As such, the logic of *Herstand v. Stein* with respect to personal disavowals applies just as well to political disavowals. That is, an artist should not have the "absolute" power to disavow authorship of his or her work for political reasons and the artist's intent should be examined. Such an approach would avoid the potential chilling effect that might arise if artists were able to disavow their works as political regimes change, often unpredictably. It may also shield an artist from pressure to disavow a work of art when political dialogue becomes especially contentious. As the polarization of politics increases, it is likely that political disavowals will increase as well. The manner in which the art market and the courts respond to these actions, will bear close observation.

"On the one hand, Di Modica's invocation of moral rights arguably fits more squarely in the framework of VARA than Prince's. … On the other hand, Di Modica's challenge raises several questions. Should non-physical transformation of a work constitute a "modification" for purposes of VARA? Should the artist's intent dictate the meaning of a work?"

[33] In "Against Moral Rights," Professor Amy Adler argues that the underlying premise of moral rights, namely, that authorial intent should dictate meaning, fundamentally misunderstands contemporary art. See Amy M. Adler, "Against Moral Rights," *op. cit.*, p. 277. Even when left intact, "art is constantly changing and we are constantly changing it." She provides the example of a curator who, in making various choices in how to display a work, from lighting to wall text, necessarily changes the meaning of the work. The notion that the artist's intent should control the meaning of the work thus ignores the capacity – or as Adler suggests, "virtue" – of contemporary art to be infused with a multiplicity of meanings.

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FRIDA KAHLO'S LOST PAINTING, *THE WOUNDED TABLE*—A MYSTERY

New Research Tracks the Work from Mexico to Russia to Poland, Where the Trail Ends

HELGA PRIGNITZ-PODA*
and
KATARINA LOPATKINA*

FIGURE 1. FRIDA KAHLO. ***The Wounded Table,*** 1940. Oil on wood, 3′9″ x 8′ (121 x 244 cm). © 2017 ARS NY.

The Wounded Table ("La Mesa Herida") **(FIG. 1)** is the largest work that Frida Kahlo ever produced and, for the moment, the most wanted. After its first exhibition in Mexico in 1940, it was rarely displayed. It measured 121 x 244 cm, and was painted in oil on wood, not on canvas, which is unusual in the *oeuvre* of the artist, who was a master of paintings in small, *ex voto*-like format. Just to have handled such a big plank of wood must have been extremely difficult for Frida Kahlo, who had a weak body.

In 1945 the painting was donated to the Soviet Union and was subsequently lent, in 1954, to an exhibition in Warsaw, Poland, where it was last publicly seen.

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The Wounded Table has been searched for by outstanding Mexican art historians.[1] The last attempt was started just recently by the investigator and curator Raúl Cano Monroy, who during the preparations for a retrospective exhibition on the activities of the FNAP (the National Front for the Visual Arts) found several interesting details and promised to find the work within the next five 5 years.[2]

We, the authors of this article, combined our findings based on extensive research in archives in Mexico, Russia and Poland. We have uncovered much new material about the painting and its disappearance, although the current location of the work is still a mystery. The results of this research are discussed in more detail below.

THE PAINTING

When Frida Kahlo produced *The Wounded Table*, in 1940, she was at the peak of her career. She was 33 years old, had had a solo exhibition in New York in 1938, followed by another one in Paris at the beginning of 1939. Her paintings were also requested for several important group exhibitions.

While she had started as an autodidact in 1929 without ever visiting any academy, within only ten years Kahlo developed her own intricate style. Contrary to what is often said, she did not make autobiographical paintings – illustrations of her daily life. Instead, she painted the surreal version of her life, the level beyond the real. In order to conceal and disguise the reality of her images in a surreal way, she took symbols and images from old myths, classic and modern literature, and filled the paintings with intellectual riddles, metaphors and secret languages, masking her inner feelings.

Her problems originated in a difficult childhood, with many sicknesses and a great feeling of loneliness. Thus, most of her paintings are self-portraits. Even her still lifes are self-portraits. And many of her self-portraits are double self-portraits. For example, in *The Wounded Table* she shows herself twice:

She is sitting at the table in her beautiful Tehuana dress, which in itself is already a disguise. The traditional colorful dress of the Tehuana women in southwest Mexico, with their wide skirts and lace fringes and embroidered Huipil-blouses, was one of Kahlo's favorite garments. But did she prefer this costume just because she could hide her shriveled leg underneath, or did she also wear it because of its significance for the Tehuana women, who dominate the markets there? The culture is considered matriarchal, and the women of Tehuantepec are in command of commerce. The Muxe men wear this dress as well and, as transgender men, they are also tolerated as Tehuanas in that region. So, this costume represents an androgynous concept of womanhood. The Tehuana Frida represents her will to overcome all difficulties.

> "Contrary to what is often said, Kahlo did not make autobiographical paintings – illustrations of her daily life. Instead, she painted the surreal version of her life, the level beyond the real."

The table with its human feet also seems to represent her. The table legs are stripped bare and show exposed muscles, as if this were an autopsy done to determine the cause of her diseases. It shows the other side of her personality, her disasters, her weakness and her suffering, which caused her frequent wish to die, or to be able to start anew.

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1 The art curator Cristina Burrus claimed in 1997 that she had found the painting, "I know where they are, but I have nothing to say" she said, though she indicated that she might publish something about the matter later (Museum Security mailing list reports 5th of March 2000). In 2000 the Director of the Casa Estudio Diego Rivera y Frida Kahlo, Blanca Garduño, reported that the Museum had done several years of research at different Customs offices, following the exhibition in Poland, including China, and afterwards to Moscow, as at that time *The Wounded Table* was still suspected to be together with the painting *Gloriosa Victoria* by Diego Rivera and the rest of the exhibition, but "They found no registry that would allow any clear declaration on the destiny of the paintings" (La Jornada, UNAM, 03.04.2000). We thank Blanca Garduño for sharing valuable information with us. In 2007 Teresa del Conde published a summary of the search over the past years, mentioning especially the research of Prignitz-Poda and of Blanca Garduño, but again, the search ended nowhere. In 2008 Prignitz-Poda gave a digest of her research papers from the archive of the Taller de Grafica Popular and the FNAP exhibition to the Tate Modern Lost Art archive. The Tate published it at the Gallery of Lost art, but for unknown reasons erased the search for *La Mesa Herida* again (www.galleryoflostart.com).

2 Milenio.com 08.05.2017.

Bleeding from four knotholes, in the shape of vulvas, the tabletop reminds us of the abortions and miscarriages that Frida had, and possibly also some abuse. Memories of all these experiences haunted her all through life and made her feelings numb, so that sometimes, when she served meals and feasts to her guests, she may have felt like the silent table itself, a piece of wood with human legs, stripped bare.

We might relate the image also to the classical interpretation of tables as a symbol for female sexuality, given by Sigmund Freud in his *Dream Psychology:* "Tables, set tables, and boards are women, perhaps on account of the opposition which does away with the bodily contours. Since 'bed and board' (mensa et thorus) constitute marriage, the former are often put for the latter in the dream, and as far as practicable the sexual presentation complex is transposed to the eating complex."[3]

The guests, peacefully standing next to the table, are the two children of her sister Cristina, Isolda and Antonio, and her pet, the little deer, Granizo. But with her at the table we also see some rather sinister guests: The *Judas de Semana Santa* to her right, a traditional figure made from papier-mâché, known to be a symbol for her idea to commit suicide.[4] On her left side she is closely connected to an old clay figure from Nayarít, who is lending an arm to Frida, who herself is armless and helpless. In a description given by Frida in her memoires, she describes herself as feeding this clay figure, the symbol for the old history that Frida can't forget and that makes her helpless.[5] Next to it at the table sits Death itself in the form of a large toy figure made from wire and plaster; its arm is playing with Frida's hair. Sometimes the image has been compared with depictions of *The Last Supper.*[6] But while Christ offered redemption to his pupils, salvation, freedom and love in professing the new faith, what Frida imparts to us is the complete opposite, so that one is more likely to find parallels with the description of Belshazzar's feast, where death and the end of an empire is announced.

Because Frida Kahlo's table is empty; she does not offer anything, neither wine nor bread to her guests, the actors in a play. The set is presented as a stage, framed by heavy curtains, as if the theatrical performance could start at exactly that moment.

PAGINA DOS—SEGUNDA SECCION EXCELSIOR

EXPOSICION SURREALISTA

Inés Amor, la dinámica y entusiasta impulsadora del arte, inauguró el miércoles pasado, en su nuevo local de la calle de Milán número 18, la primera exposición surrealista que se hace en esta metrópoli. De un culto artístico se ocupa nuestro crítico, y nosotros sólo aseguramos que el recital fué completo por todos conceptos. Aparecen en la primera de estas fotografías, Nahui Olin, Salvador Novo, Alfonso Sánchez y Wolfgang Paalen, saboreando un exquisito "cocktail", y en la otra, entre muchos concurrentes, don Eduardo Villaseñor, Justino Fernández, Manuel del Castillo Negrete, Carlos Obregón Santacilia, Gabriel Orozdeo, Elías Nandino, César Moro y Juan Soriano.

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Examen Profesional

SELECTA CONCURRENCIA EN LA INAUGURACION DE LA EXPOSICION SURREALISTA

Fué una Verdadera Fiesta de Cultura y un Acontecimiento

FIGURE 2. Opening of the International Exhibition of Surrealism, México showing *The Wounded Table* in the background. *Excelsior,* 20.1.1940, Nr 8291, 2a sec, p.1. Reprofoto taken by Rafael Doniz.

EXHIBITIONS

The painting had its great debut in 1940 at the groundbreaking Exposición Internacional del Surrealismo, which took place at the newly opened Galería de Arte Mexicano of Inés Amor,[7] where it was prominently displayed, commented upon by the press, and considered to be a painting of night-

3 Sigmund Freud, Chapter V, "Sex in Dreams," in *Dream Psychology: Psychoanalysis for Beginners* (New York: The James A. McCann Company, 1921).

4 For detailed descriptions of the Mexican tradition to explode these figures after Good Friday, before Easter in their streets, see: Helga Prignitz-Poda: *Frida Kahlo, The Painter and her Work* (Schirmer-Mosel, 2003), pp. 36-37.

5 Salomon Grimberg, *Frida Kahlo: Song of Herself,* (Merrell, 2008), p. 82.

6 Last by Alison McNearny in *The Daily Beast,* March 25, 2017.

7 Organized by French writer and group leader André Breton, the Austrian Surrealist Wolfgang Paalen and the Peruvian poet César Moro, the exhibition was shown in January 1940 at the newly opened Galería de Arte Mexicano in Mexico. We have to assume that a great deal of the painting was already completed in 1939. Kahlo had another masterpiece in that show: *The Two Fridas.* We thank Andrea Kettenman for the reproduction of the image out of the daily *Excelsior* January 20, 1940.

marish horror[8] **(FIG.2)**. Even the well-known writer and poet Luis Cardoza y Aragón confessed that he preferred the small paintings that he had seen from Kahlo earlier.[9] Horacio Quinones described his impression in *Hoy* magazine: "Sensation. This is surrealism. To me personally it seems to be a form of self-torture."[10] Only Luis G. Basurto wrote a very positive note especially on Kahlo's painting, "which is so strong because she brings to the surface of her paintings the Masquerade of her own personality in a deep and profoundly unconscious manner … Frida Kahlo is a magnificent painter." And he notes especially: "The trick to attach objects to the painting in a second layer – in the tradition of some romantic painters before 1900 – shows the second personality of the artist, who seems to be furious about the fact that she should subordinate herself under a name and tendency, while hers is without doubt a real spirituality."[11]

Basurto refers to a fact that has been forgotten by now: The Tehuana Frida sitting at the table was wearing real jewelry. The different images that we know from the painting show clearly that she was wearing different necklaces, which must have been affixed to the wooden board through holes drilled into the painting. Her pupil, Arturo Estrada, remembered having seen the painting in Kahlo's home, and the Tehuana on the painting was wearing real jade beads.[12]

Soon after this exhibition, the painting was sent by Kahlo to the Julien Levy Gallery in New York. She told her lover Nickolas Muray on February 6th, after the closing of the exhibition: "Miguel will take one big painting for the show at the Modern Museum. The other big one I will send to Julien. He proposed to me to have a show next

FIGURE 3. Frida in her studio posed as if still painting *The Wounded Table,* December 1940. Photographer: Bernard Silberstein.

FIGURE 4. Frida painting her self-portrait while Diego Rivera watches, December 1940. Photographer: Bernard Silberstein.

8 Roberto Manzanares. In: *Estampa* I, Nr. 33, January 23, 1940.

9 Luis Cardoza y Aragón: "Exposición Surrealista," in: *El Nacional,* January 28, 1940.

10 Horacio Quinones, "Surrelismo es sensación," in: *Hoy,* February 3, 1940.

11 Luis G. Basurto, "La Gran Exposición Surrealista," in *Excelsior,* January 1,1940.

12 Arturo Estrada: "Mi recuerdo de un cuadro de la maestra Frida," unpublished manuscript, Archive Prignitz, Berlin.

FIGURE 5. Frida Kahlo and her friend, the artist Emmy Lou Packard, in Frida's home in 1941. *The Wounded Table* is hanging above the sofa. Unknown photographer (Diego Rivera?).

November, so I am working hard."[13] So, while "The Two Fridas" went officially to the big exhibition, "20 Centuries of Mexican Art," which was going to open May 15 at the Museum of Modern Art (MoMA) in New York, her second big painting came there by accident and even without her knowledge. A month after the opening at MoMA, she still did not know that the painting was shown there. In a letter to her husband, the painter Diego Rivera, June 11, 1940, she states: "I wrote to Levy, but he has not answered, and I do not even know, what happened to my painting La Mesa Herida, which was taken by Miguel, so that he should hand it over to Levy. I have no news on that exhibition whatsoever."[14]

Finally, when the exhibition at MoMA closed at the end of September, *The Wounded Table* came back to Kahlo's home, and she hung it in her studio.

In December 1940, the Cincinnati-born photographer, Bernard G. Silberstein (1905–1999), came and did a two-day photo shoot. On that occasion, the heavy painting was taken down from the wall and put back on the ground, leaning against a scaffold, so that Frida could pose as if she had just painted it **(FIGS. 3 & 4).**

For the next four years, it hung in different rooms in the Blue House. It can be seen in the background of old photographs, when guests visited Frida's home and photos were taken. For example, in 1941 during a visit by her friend, the artist Emmy Lou Packard (1914–1998), who had assisted Diego during the San Francisco murals, it was hanging above the couch **(FIG. 5).** Finally, in November 1942 the painting was once again shown in a public exhibition celebrating the foundation of the Seminario de Cultura Mexicana at the Palace of Fine Arts **(FIG. 6).**

FIGURE 6. Opening of the exhibition celebrating the Foundation of the Seminario de Cultura Mexicana, Palacio de Bellas Artes, November 20, 1942. Frida Kahlo with writers and journalists. Unknown photographer.

13 Raquel Tibol (edit): *Escrituras de Frida Kahlo.* México 2007. p. 269.

14 *Ibid,* p. 281.

A GIFT TO THE SOVIET UNION

While Frida always expressed her own problems and her own ideas, her emotional and spiritual reality, in a surreal manner, she always wanted to be more political with her work and to be of more help for the Revolutionary cause. But the Communist Party had excluded them long ago. In the beginning of the 1930s, Kahlo and Rivera had welcomed the exiled Trotsky to their own home, and it took a long time, and a lot of self-humiliation and self-criticism by Rivera and Kahlo, until the Communist Party forgave them and they re-entered the Party. When they finally reconciled, Kahlo took close interest in the development of the Communist Party and the Soviet Union, and even collected signatures for the peace movement and participated in Party meetings. Both artists also made a commitment to donate their works to the country of Revolution – Frida Kahlo did it in 1945 and Diego Rivera in 1955.

Kahlo presented her work in August 1945; she chose *The Wounded Table* for the donation. Along with works of other prominent Mexican artists, the painting was intended as a major gift of friendship to the Soviet Union.

It was the Soviet Ambassador to Mexico, Konstantin Umansky (1902–1945), who initiated the donation in 1943. After twelve years of absence, diplomatic relations between the USSR and Mexico were re-established in November 1942, and Umansky became the first Soviet Ambassador to Mexico after the break. Young, fluent in several European languages, sociable and experienced (as he had served as a Soviet Ambassador to the U.S. in 1939–1941), Umansky was also well known to Stalin, for whom he translated conversations with foreign guests on several occasions. He was specifically chosen for this job, as Latin America and Mexico in particular were viewed as a very important and promising area of diplomatic work. After his arrival in Mexico City in 1943, Umansky soon grew close to many artists and writers. As a result, he launched negotiations with the leaders of the Mexican art scene and with The Institute for

"Both artists made a commitment to donate their works to the country of Revolution – Frida Kahlo did it in 1945 and Diego Rivera in 1955. … [Kahlo] chose *The Wounded Table* for the donation. Along with works of other prominent Mexican artists, the painting was intended as a major gift of friendship to the Soviet Union."

Mexican-Russian Cultural Exchange (Instituto de Intercambio Cultural Mexicano-Ruso). Although Konstantin Umansky died in a plane crash on January 25,1945, his project survived him. In October 1945, Soviet diplomats prepared a draft of an official letter, signed by the new Soviet Ambassador to Mexico, Alexander Kapustin, to thank the artists who expressed their willingness to donate their artworks.[15]

The monthly magazine *Cultura Sovietica* published a long article in August 1945 (Nr 10) on the Museum of New Western Art in Moscow describing in colorful words its rich collection of Western art, which would not be restricted to Social Realism. This report encouraged many artists to follow the call for donations. Frida Kahlo – together with other artists – envisaged her painting as a gift to a unique Soviet museum with an outstanding collection of art.

Cultura Sovietica commented most gratefully on the donations, and especially welcomed the donation of 17 graphic works by the Mexican workshop of popular prints, TGP – Taller de Gráfica Popular, but it also mentions the gift by Frida.

Once the first testimonial letter to artists had been sent, it took almost two years to collect all promised works from the artists and to transport them to The Institute for Mexican-Russian Cultural Exchange. On March 19, 1947, Samuel Vasconcelos, a secretary of The Institute, sent a note to Alexander Kapustin

15 Arhiv vneshnej politiki Rossijskoi Federatsii (The Foreign Policy Archive of the Russian Federation, abbreviated –AVP RF), f. 182 op. 1 p. 3 d. 9 list. 43.

accompanying a transfer of a number of artworks to the Soviet authorities:

> I am hereby handing over to you several paintings, prints and photographs, which were graciously presented by outstanding Mexican artists, with the mediation of The Institute for Mexican-Russian Cultural Exchange, for the Museum of New Western Art in Moscow, in order to become permanent exhibits there, representing Mexican visual arts. [...]

The following artists gave their works:

Paintings: Ignacio Aguirre, Raul Anguiano, Luis Arenal, Joaquin Clausell, by courtesy of Angela Cervantes, widow of Joaquin Clausell, Olga Costa, Lola Cueto, José Chávez Morado, Francisco Dosamantes, Arturo Garcia Bustos, Frida Kahlo, Isidoro Ocampo, Carlos Orozco Romero, and Francisco Mora.

Graphics: Ignacio Aguirre, Raul Anguiano, Luis Arenal, Alberto Beltrán, Angel Bracho, Fernando Pacheco, Francisco Dosamantes, Jesus Escobedo, Arturo García Bustos, Leopoldo Méndez, Francisco Mora, Isidoro Ocampo, Pablo O'Higgins, José María Guadalupe Posada, by courtesy of his descendant Blas Venegas Arroyo, Julio Prieto, Everardo Ramirez, Ramon Sosa-Montes and Alfredo Zalce.

Photography: Manuel Alvarez Bravo and Doris Heyden de Alvarez Bravo.[16]

While *Cultura Sovietica* reported the shipment of the works in May, and also mentioned Frida Kahlo's work among the gifts, *The Wounded Table* could still be seen hanging in the conference room of the Instituto de Intercambio Cultural Mexicano-Ruso during a lecture by Prof. René Marchand on contemporary Russian novels in July 1947 **(FIG.7).** The magazine printed an image of the special guests, without mentioning Frida's painting on the wall.[17] Presumably, the paintings were sent to Moscow soon after this lecture in July.

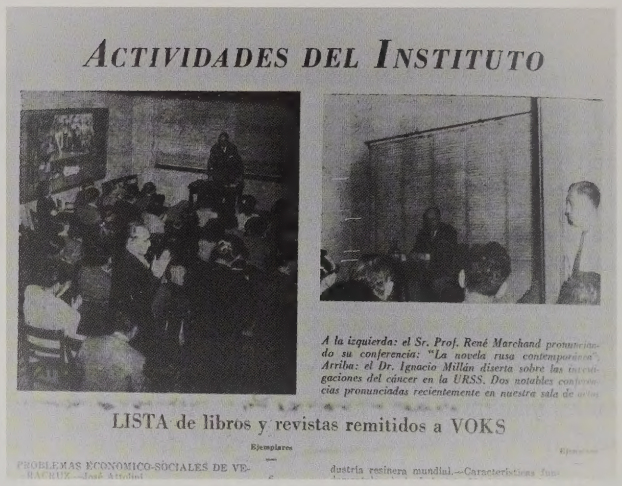
ACTIVIDADES DEL INSTITUTO
A la izquierda: el Sr. Prof. René Marchand pronunciando su conferencia: "La novela rusa contemporánea". Arriba: el Dr. Ignacio Millán diserta sobre las investigaciones del cáncer en la URSS. Dos notables conferencias pronunciadas recientemente en nuestra sala de actos
LISTA de libros y revistas remitidos a VOKS
Ejemplares

FIGURE 7. *The Wounded Table* (visible in the upper left photo) shown in the Instituto de Intercambio Cultural Mexicano-Ruso, July 1947. *Cultura Sovietica*, Nr 33, July 1947. Photo, courtesy the Nettie Lee Benson Latin American Collection, Austin TX.

SOVIET CULTURAL INSTITUTIONS

As the following correspondence will show, The State Museum of New Western Art in Moscow was, from the very beginning, expected to be the hosting venue of the prospective show. It was founded in 1923 in Moscow and was based on the nationalized collections of Sergey Shchukin and Ivan Morozov, world renowned collectors of Western European art, mainly French paintings and sculptures of the 1860s –1910s. Outstanding pieces by Manet, Renoir, Degas, Monet, van Gogh, Gauguin, Pissarro, Toulouse-Lautrec, Cézanne, Matisse, Picasso, and Rodin were nationalized and entered the museum's collection. In 1930-1931, The State Hermitage Museum in what was then Leningrad[18] received 79 works from the museum's collection and immediately organized their permanent display. In an adjacent area, The Hermitage curators

16 AVP RF f. 182. op. 2 p. 11 d. 46. list. 13.

17 "Envio de artistas Mexicanos," *Cultura Sovietica*, Nr 31, May 1947; and "Actividades del Instituto," *Cultura Sovietica*, Nr 33, July 1947. We are very grateful to William Stutts from Austin for helping us to get the reproduction of the image in *Cultura Sovietica* out of the University Archive.

18 St. Petersburg was renamed Petrograd in 1914 and then changed to Leningrad in 1923. In 1991 the city became St. Petersburg again.

also attempted to create a "Room for Contemporary Art" in 1932, an exhibition space connected to a modern art collection, with the intention of regularly showing up-to-date art; however, this initiative did not live long, lasting only to the 1940s.

From the revolution until the early 1940s, The State Museum of New Western Art remained the only institution in the Soviet Union professionally working with modern visual art and living artists, and the only museum that had a first class collection of modern art. It is logical that it was viewed as the only possible partner for the forthcoming donation. Unfortunately, when the Mexican donation arrived in 1947, the museum had been closed to the public for a year, due to ideological reasons, and on March 6, 1948, after being condemned as "a hothouse of servility to the decadent bourgeois culture," the museum was disbanded and its collection divided between The Pushkin State Museum of Fine Arts in Moscow and The Hermitage.

Instead of a museum, The All-Union Society for Cultural Relations with Foreign Countries (VOKS) became a host venue. Importing any kind of cultural objects or activities to the Soviet Union was not its key function, and exhibitions of foreign artists were merely a by-product of cultural communication, often treated as a diplomatic overture to one of the "societies of friendship" for a forthcoming exhibition of Soviet artists abroad.[19] Originally conceived as an outpost for cultural exchange, by 1940, VOKS had in effect become a "filtering and controlling organization" deeply involved in political and ideological affairs.[20]

In December of 1947, it was reported that 19 works by Mexican artists had arrived in Moscow,[21] causing a great stir among the VOKS employees who suddenly found themselves responsible for the collection. Because VOKS's head office was not previously involved in the donation-related correspondence, and no documents were enclosed in the crates, identifying the works and even comprehending the very fact of the donation turned into a very challenging process. Upon the artworks' arrival, the American Department of VOKS was instructed to manage them, so a head of the department, Ivan Khmarsky, prepared a memorandum to the chairman of VOKS, Vladimir Kemenov, with the following suggestion for handling the situation. He wrote:

> A collection of Mexican paintings and drawings that arrived from Mexico to VOKS was sent by The Institute for Mexican-Russian Cultural Exchange for further transfer to the State Museum of New Western Art. Most of the works received are examples of a decadent bourgeois formalist art. Among the graphic works, some are done realistically; two prints are devoted to a criticism of American imperialism. VOKS has not received any profiles of the Mexican artists who sent their work to Moscow or the titles of the works. We only know that the graphic works are mostly provided by the Taller de Gráfica Popular – a left-progressive union of Mexican graphic artists. I deem it necessary:
>
> 1. To request a telegram with profiles of the artists and the exhibition catalogue.
> 2. To organize a viewing of the Mexican paintings and drawings at a meeting of the Fine Arts section of VOKS.
> 3. To publish in the newspaper *Soviet Art* or in the magazine *Art,* the prints devoted to criticism of American imperialism and to provide in these periodicals brief information about the submitted works.
> 4. To send the works to the Western Art Museum.
> 5. To send a letter to The Institute for Mexican-Russian Cultural Exchange from the Fine Arts section of VOKS to thank them for the gift, pointing out the best works, criticizing the

---

19 Michael David-Fox, *Showcasing the Great Experiment: Cultural Diplomacy and Western Visitors to the Soviet Union, 1921-1941* (Oxford University Press: Oxford & New York, 2011), p. 279.

20 *Ibid.*

21 Gosudarstvennij arhiv Rossijskoi Federatsii (The State Archive of Russian Federation, abbreviated – GARF) f. 5283 op. 22 d. 193 t. 1 list 45.

> degenerate pieces and presenting the point of view of the Soviet people on public works of art.
>
> 6. To send an article to the magazine of The Institute for Mexican-Russian Cultural Exchange devoted to the All-Union Art Exhibition in Moscow and a series of photographs of the best works of Soviet art.[22]

Vladimir Kemenov, in his turn, sent a letter to a representative of VOKS in Mexico in March 24, 1948:

> In the case of the works of Mexican art, it is necessary to bear in mind that we are interested in the works of the realist movement, that are democratic in spirit and aimed against imperialism in any form. When it comes to the selection of paintings obtained from The Institute for Mexican-Russian Cultural Exchange, these consist mainly of formalist works that are alien to the principles of Soviet Realist art; the possibility of displaying such artworks in the Soviet Union is excluded. The fact of sending such works to the USSR puts VOKS in a difficult situation and only complicates our relationship with the Institute.[23]

VOKS continued to correspond with Mexico about the artists' profiles for almost a year, until January 1949. On January 11, 1949, the Soviet Ambassador to Mexico, Alexander Kapustin, sent to Moscow a list of names and biographies of the 19 artists, and on February 21, 17 photo-reproductions.[24] In the cover letter, he noted that "judging from the reproductions, the paintings of Luis Arenal (number 12), Carlos Orozco Romero (number 13), Federico Silva (number 14), Frida Kahlo (number 15), and Roberto Montenegro (number 16) cannot be put on public view."[25]

After one and a half years, a meeting of the Fine Arts Section of VOKS became possible, as all the required documents were delivered. It took place in the middle of the year and was chaired by Aleksandr Gerasimov,[26] the head of the Fine Arts Section, a favorite artist of Joseph Stalin, a President of the Academy of Arts of the USSR (1947–1957) and by 1949, a winner of four Stalin prizes, the highest art award in the Soviet Union at the time. In the report of this meeting, Gerasimov stated that: "The Mexican paintings presented were formalistic and surrealist in their method of execution. It was not possible to display them publicly, so the Fine Arts Section asked to remove the canvases from their stretchers and pass them on to the *Pushkin Fine Art Museum* for storage." This led Gerasimov to conclude: "Let's apologize to Pushkin, comrades!"[27]

> "[In 1953,] the Soviet Ambassador to Mexico sent a request for [*The Wounded Table*] to VOKS, and VOKS … replied that 'the specified painting has no artistic value according to the opinion of Soviet specialists, was never exhibited and is stored at VOKS'."

Despite the proposal, all the pieces remained at VOKS till 1955, and there is no clear indication as to where they were transferred afterwards. That research is yet to be done. Only one artwork from the donation was mentioned in official papers after 1949–*The Wounded Table* by Frida Kahlo. In 1952, Fernando Gamboa, Director of Instituto Nacional de Bellas Artes requested the painting for an exhibition in Paris, "Art of Mexico from pre-Columbian Times to the Present Day." The exhibition was organized with the support of the Mexican government and was intended to show the whole range of fine arts of Mexico. The host-

22 GARF f. 5283 op. 14 d. 419. list 51.

23 GARF f. 5283 op. 14 d. 419. list 36.

24 These documents are not traced yet.

25 GARF f. 5283 op. 22 d. 193 t.1 list 89.

26 Aleksandr Gerasimov (1881–1963) was a Soviet painter, a leader of the Union of Artists of the USSR and the Soviet Academy of Arts. He was at the forefront of the attacks against cosmopolitism and formalism in the mid 1940s–1950s.

27 The museum was named after Aleksandr Pushkin (1799–1837), a prominent Russian poet.

FIGURE 8. ***The Wounded Table*** as exhibited at the Zachęta in Warsaw, 1955, its last known venue. Photographer: Leonard Sempolinski.

ing venues became the Palais de Tokyo in Paris (1952) and the Tate Gallery in London (1953). The Soviet Ambassador to Mexico sent a request for the work to VOKS, and VOKS – through the Foreign Ministry of the USSR – replied that "the specified painting has no artistic value according to the opinion of Soviet specialists, was never exhibited and is stored at VOKS. The VOKS Board considers it appropriate to transfer a painting by F. Kahlo to the Mexican Embassy in the USSR at its disposal."[28] Despite the agreement of the Soviet side, the piece was not sent to the exhibition, as the Mexican Embassy considered the transportation of the work to be too expensive. It was left with VOKS.[29]

Simultaneously with the negotiations about the show, the Soviet Union negotiated the arrival in the Soviet Union of Kahlo herself. The Soviet Foreign Ministry informed the VOKS that on:

> February 23, 1953, Frida Kahlo, the wife of the famous Mexican progressive artist Diego Rivera, in a conversation with the Soviet Ambassador to Mexico, comrade Aleksandr Kapustin, informed him that Diego Rivera is finishing a portrait of Josef Stalin. Frida Kahlo wanted to bring this portrait to Moscow personally and asked to help her with the organization of a trip this summer. Comrade Kapustin indicates that Frida Kahlo is an artist of futuristic style. It is known that in 1948 she sent a gift to the VOKS. According to comrade Kapustin, the desire of the artist Frida Kahlo to visit the Soviet Union, apparently coincided with a need to be examined by Soviet doctors, as she suffers from serious leg injuries caused by a car accident. Please inform us about your decision on the possibility of allowing Frida Kahlo to come to Moscow.[30]

On May 23, 1953, VOKS replied that it was not interested in the visit of the artist, who died at age 47 the following year.[31]

1955 IN WARSAW AND DISAPPEARANCE

A new request for the painting followed in 1954, after Kahlo's death. Diego Rivera appealed to the Soviet Ambassador to Mexico asking for an opportunity to display *The Wounded Table* in Warsaw in 1955.[32] On December 2, 1954, after a short correspondence between VOKS and the Foreign Ministry of the Soviet Union, the painting was sent to Poland. This is its last known venue.

The exhibition "Wystawa Sztuki Meksykanskiej" took place at the Zachęta National Gallery of Art in Warsaw in February and March 1955 and was organized by the Frente Nacional de Artes Plásticas

28 GARF f. 5283 op. 22ñ d. 382 list 31.

29 *Op. cit.* list 82.

30 *Ibid.*

31 GARF f. 5283 op. 22 d. 382 list 84. Frida Kahlo died on July, 13, 1954.

32 GARF f. 5283 op. 14 d. 659 list 67.

(FNAP) on the Mexican side and the Polish Committee for Cultural Relations with Foreign Countries on the other. The exhibition catalogue was so popular that it had to be reprinted twice because so many people came to see the show and became enthusiastic about Mexican art. The image of *The Wounded Table* in this catalogue is the last known trace of the painting. The image was taken at the Zachęta by the photographer Leonard Sempolinski and it shows the painting without the jade pearl necklace around Frida's neck that had been described before, while the painting was still hanging in México **(FIG. 8).**

> "A new request for the painting followed in 1954, after Kahlo's death. Diego Rivera appealed to the Soviet Ambassador to Mexico asking for an opportunity to display *The Wounded Table* in Warsaw in 1955. On December 2, 1954, … the painting was sent to Poland. This is its last known venue."

Many people had been involved in organizing this major exhibition, which consisted of about 400 artworks by 60 different artists. And because of its great success, many of the artworks remained in Poland after the exhibition. Today the National Museum of Warsaw owns four paintings and three hundred graphic works from this exhibition.

The press and the critical reviews surrounding this show were abundant,[33] but they very seldom mentioned the Kahlo painting, although, because of its size alone, it must have been prominently displayed. Amid the other, tamer, realistic works in the exhibition, Kahlo's painting must have appeared like a surreal addition. In his article on the show, the writer and art historian Jerzy Olkiewicz asks whether these surreal influences derive from Europe. With its modern Western European style, the painting hardly seemed "Mexican" to him. The writer Ignacy Witz compared Frida's painting to the painting *Metropolis and Half Colony* by Xavier Guerrero (which was bought by the National Museum in Warsaw and is still in their collection). He found both works too individualistic, which in his eyes reduced their importance. In general, all the journalists agreed with this point of view. The press clippings found thus far contain no contrary opinions.

After Warsaw, the exhibition travelled to other cities and countries: Sofia, Bulgaria, April 25 - May 1955; Bucharest, Romania, July - August 1955; Berlin, September - October 1955; Beijing, Canton, China, March - August 1956.

Accompanied in the beginning by the Mexican curators Ignacio Marquez Rodiles, Naya Marquez and Marco Arturo Montero, and later on in China by Ignacio Aguirre and other artists from the TGP, the correspondence between the curators and the members of the TGP reveals a permanent demand for more works, as in each of the venues, the museums acquired some of the exhibited works. This show does not resemble an exhibition as we know it nowadays, with specific loans for the exhibition venues. It was more like a commercial show, with the FNAP operating like a gallery that sold works on the way from one country to another.

Based on the correspondence of Marquez Rodiles, who was repeatedly writing to Chávez Morado in Mexico and asking for new works by Frida, "because they have none," we know that after Warsaw there was no longer any work by Frida Kahlo included in the show. In August 1955, Marquez Rodiles wrote a letter to the management of the FNAP: "In respect to Frida Kahlo, only Diego Rivera could solve the conflict and convince the URSS to lend '*The Wounded Table*' again, as they did for Poland."[34] Thus, her great painting either remained in Warsaw or was sent back to Moscow directly from the Zachęta. The conflict between Diego Rivera and the FNAP

[33] The press information is in the archive of the Zachęta in Warsaw.

[34] Letter by Marquez Rodiles to Ignacio Aguirre, José Chávez Morado, Xavier Guerrero, Marco Arturo Montero y los demás dirigentes del F.N.A.P., 3rd of August 1955. Archive Prignitz, Berlin.

centered on his mural "Glorious Victoria," which had been shipped too late and did not reach Warsaw in time for the Zachęta exhibition, so it was shown only after Warsaw and in all subsequent venues. It is beyond the scope and space of this article dedicated to *The Wounded Table* to analyze this conflict. But we should bear in mind that Rivera's painting, too, was considered "lost" for many years, and was found only in the year 2000 at the depot of the Pushkin Museum in Moscow. That means *La Gloriosa Victoria* returned to Moscow in 1956 or 1957, along with several other works from the FNAP exhibition in China, where it had been exhibited with great success. In 2000 the administrator of acquisitions of the Pushkin Museum, Maria Osinenko, confirmed that the *Glorious Victoria* painting had been registered since 1958 as the property of the Pushkin Museum[35]; whereas the Pushkin Museum has denied several times owning Kahlo's *Wounded Table.*

As we now know that Moscow did not really esteem the gift of Frida Kahlo's painting, and found it not worth exhibiting and too expensive to transport, it is quite likely that after Warsaw it was not even sent back to Moscow, but remained in Poland. Its current whereabouts remain a mystery, but only, we hope, for now.

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35 Museum Security Network Listserv report of March 6. 2000. In December, 1956 Diego Rivera asked Yuri Paporov, VOKS representative in Mexico, about "rumors circulating among the members of Frente Nacional de Artes Plásticas (FNAP) that the Union of Soviet artists had refused to accept his gift of a painting on the military coup d'état in Guatemala and United States interference with the policy of Guatemala." "I personally do not believe these rumors," Rivera said, "and if the painting is not in the USSR yet, the fault is on the leaders of the FNAP." Paporov assured Rivera that the painting is currently in China with an exhibition of Mexican painting. In 1958 Glorious Victoria entered the Pushkin museum collection as a gift from the Union of Soviet artists (GARF f. 5283 op.14 d. 662 list 37. http://www.arts-museum.ru/data/fonds/europe_and_america/j/0000_1000/6937_Slavnaya_pobeda/index.php).

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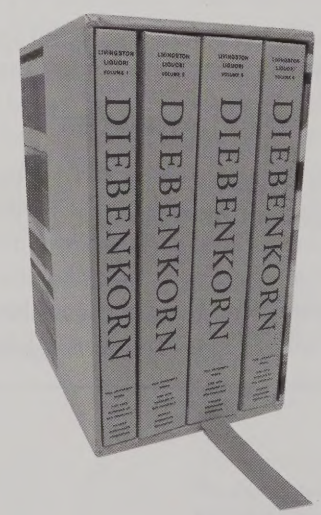

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STOLEN ART*

PAINTINGS

The following three paintings were stolen from a business in Montreuil, France on April 19, 2017. *L17.1192. See also item no. 115:

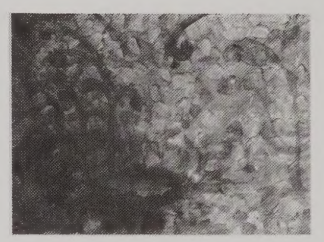
92. **PHILIP PEARLSTEIN** (American, born 1924). ***Female Model Reclining on an Empire Sofa, 1973.*** Oil on canvas. 123 x 183 cm (approx. 4 ½′ x 6′).

92

93. **ROBERT STANLEY** (American, 1932-1997). ***Elizabeth E,*** 1989. Oil on canvas. 142.19 x 193 cm (approx. 4 ½′ x 6 ¼′). Signed and dated l/l.

93

94. **WILLIAM WEGMAN** (American, born 1943). ***One Dinosaur Plaza,*** 1988. Oil on canvas. 101.6 x 137.16 cm (3 ¼′ x 4 ½′).



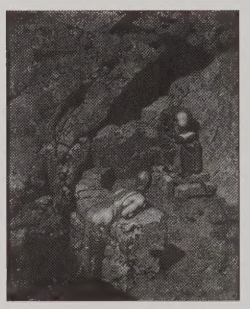
94

The following two paintings were stolen from a hotel in Genicourt, France on June 17, 2017. *L17.943. See also item nos. 143, 144 and 148:

95. **MOHAMED KHADDA** (Algerian, 1930-1991). ***Untitled.*** Oil on canvas. 40 x 34 cm (approx. 15 ¾″ x 13 ⅜″).

95

96. **ALEXANDER ROTHAUG** (Austrian, 1870-1946). ***The Temptation of Saint Anthony.*** Oil on canvas. 58 x 47 cm (approx. 22 ¾″ x 18 ½″).



96

The following two paintings by an Unknown Artist (English, 19th century) were stolen in transit in Royston, England on November 21, 2016. *L17.1298:

97. ***Portrait of a Man.*** Oil on canvas. 102.36 x 89 cm (approx. 40 ¼″ x 35″).

97

98. **Portrait of a Woman.** Oil on canvas. 102.36 x 89 cm (approx. 40 ¼″ x 35″).

98

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*Numbering for the Vol. 18 Cumulative Index of Stolen Art began with Vol. 18, no. 1.

99

100

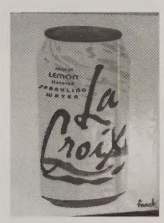
99. **EMIL ADAM** (German, 1843-1924). ***Race Horse Prado.*** Oil painting. 30 x 38 cm (approx. 11¾″ x 15″). *L17.1183. Stolen from a private residence in Göppingen, Germany on May 5, 2017.

100. **GIUSEPPE BONITO** (Italian, 1707-1789). ***The Dice Players,*** 1750. Oil on canvas. 99.49 x 131 cm (approx. 39 ¼″ x 51 ½″). *L17.1057. Stolen from a gallery in Genoa, Italy on January 1, 2017.

102

101. **EDOUARD LEON CORTÈS** (French, 1882-1969). ***L'Arc de Triomphe,*** 1950. See color photo on inside back cover.

102. **ÉDOUARD DUBUFE** (French, 1819-1883). ***Venus Awakening,*** 1861. Oil painting. 26.39 x 21 cm (approx. 10 ⅜″ x 8 ¼″). *L17.1095. Stolen from a gallery in London, England on February 1, 2017.



103

103. **FNNCH** (American, contemporary). ***9 Cans of La Croix (Lemon),*** 2017. Spray paint on canvas. 50.8 x 40.64 cm (20″ x 16″). Printed on the verso: 228450-17031.*L17.1466. Stolen from a private residence in San Francisco, CA on September 2, 2017.

104

104. **JOHANNES GRUTZKE** (German, 1937-2017). ***Die Luke II,*** 1965. Oil on panel. 65 x 75 cm (approx. 25 ½″ x 29 ½″). The second of a series of two paintings. *L17.1296. Stolen from a private residence in Essen Germany on April 1, 2017.

105

105. **BOSCOE HOLDER** (Trinidadian, 1921-2007). ***Sheila in Profile,*** 1992. Acrylic on canvas. 137 x 96 cm (approx. 54″ x 37 ¾″). *L17.1102. Stolen in transit from Indiana, U.S. to London, England on May 26, 2017.

106

106. **ARNE TEXNES KAVLI** (Norwegian, 1878-1970). ***Kvinneakt,*** 1950. Oil painting. 105 x 66 cm (approx. 41 ⅜″ x 26″). *L17.1470. Stolen from a private club in Oslo, Norway on August 7, 2017.

108

107. **WILLIAM KENTRIDGE** (South African, born 1955). ***Untitled (Starry Night),*** 1993. See color photo on inside back cover.

108. **MIGUEL JACINTO MELÉNDEZ** (Spanish, 1679-1734). ***Holy Family with the Child St. John the Baptist, 1722.*** Oil on canvas. 238.51 x 180 cm (approx. 94″ x 70 ¾″). *L17.1271. Stolen from a private residence in Malaga, Spain on June 12, 2017.

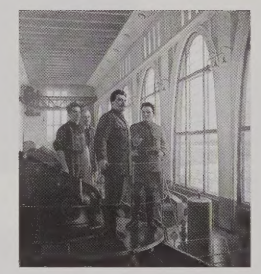
STOLEN ART (cont.)

109. **THOMAS LIVINGSTONE MITCHELL** (Scottish, 1792-1855). ***Passage of the Blacks,*** c. 1800-1820. Oil on panel. 54.51 x 69.8 cm (approx. 21 ½″ x 27 ½″). Inscribed on the verso: in yellow paint: Passage of the Blacks; in pencil: Blue Mountains New South Wales. *L17.1415. Stolen from a gallery in Windsor, Victoria, Australia on July 25, 2017.

109

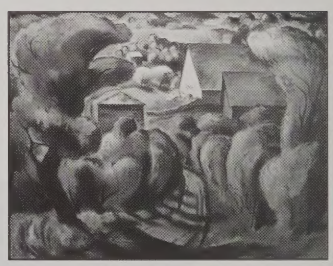
110. **PIERRE AUGUSTE RENOIR** (French, 1841-1919). ***Portrait of a Young Girl with Blond Hair.*** See color photo on inside back cover.

111. **ALEKSANDR NIKOLAYEVICH SAMOKHVALOV** (Russian, 1894-1971). ***Stalin and Kirov at Volkhovstroi,*** 1940. Oil on canvas. 170 x 150 cm (approx. 67″ x 59″). *L17.1125. Stolen from an auction house in London, England on November 27, 2006.



111

112. **MILLARD SHEETS** (American, 1907-1989). ***Padua Olive Hills Drive,*** 1940. Oil on canvas. 71.12 x 91.44 cm (28″ x 36″). *L17.1120. Stolen from a college in Los Angeles, CA on June 30, 2017.



112

113. **Unknown Artist** (American, contemporary). ***Redheads II.*** Acrylic on canvas. 60.96 x 30.48 cm (24″ x 12″). *L17.1507. Stolen from an exhibit in The Villages, Florida in September 2017.

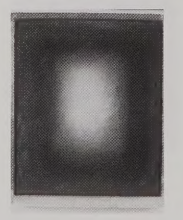
113

MIXED MEDIA

114. **MARIA HOLOHAN** (English, born 1982). ***The Floating Woman,*** 2006. Paint, newsprint, and textiles. Ht: 152.4 cm (5'). *L17.1245. Stolen from a private residence in Wiltshire, England on July 24, 2017.

114

115. **ERIC ORR** (American, 1939-1998). ***Domus II,*** 1985. Mixed media. 38.74 x 33 cm (15 ¼″ x 13″). *L17.1192. Stolen in Montreuil, France on April 19, 2017. See also item nos. 92-94.



115

WORKS ON PAPER

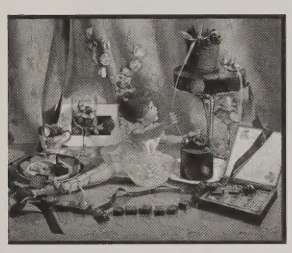
116

117

116. **ROLAND OUDOT** (French, 1897-1981). ***Untitled,*** 1936. Watercolor. Signed l/l. *L17.1156. Stolen from a private residence in Mont-Royal, Quebec, Canada on July 6, 2017. See also item no. 101.

117. **JULES PASCIN** (b. Bulgaria, 1885; d. France, 1930). ***Street Scene, USA,*** 1915. Ink on paper. 21 x 21.49 cm (approx. 8 ¼″ x 8 ½″). Signed l/r; stamped l/r: Atelier Pascin. *L17.1225. Stolen from a showroom [of an art bookstore] in London, England on July 24, 2017.

118



119

118. **PIERRE-AUGUSTE RENOIR** (French, 1841-1919). ***Portrait in a Pink Dress,*** 1881. Pastel on paper. 53.34 x 45.72 cm (21″ x 18″). *L17.1173. Stolen in Montreal, Quebec, Canada on September 29, 2013.

119. **MYRA SCHUETTER** (American, contemporary). ***Ballerina Doll with Fort Knox in a Chocolate Dream,*** 2007. Watercolor on paper. 86.36 x 106.68 cm (34″ x 42″). Signed l/r. *L17.1288. Stolen from a gallery in Santa Fe, NM on February 4, 2008.

PRINTS, ETCHINGS, LITHOGRAPHS

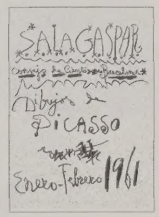
120

121

The following nine works by **PABLO PICASSO** (Spanish, 1881-1973) were stolen in Basel, Switzerland on September 24, 2016. *L17.1265:

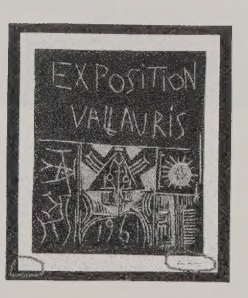
120. ***Ballets Russe from Diaghilev,*** 1939. Lithograph. 65 x 50 cm (approx. 25 ½″ x 19 ¾″).

121. ***Ceramic Exhibition in Vallauris,*** 1959. Linocut. Ed. no. 9/175. Signed l/r. 76.5 x 57 cm (approx. 30″ x 22 ½″).



122

122. ***Drawings by Picasso,*** 1961. Original lithograph. 70 x 50 cm (approx. 27 ½″ x 19 ¾″).



123

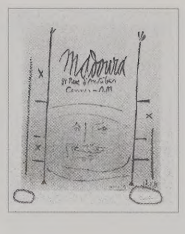
123. ***Exhibition Vallauris,*** 1961. Linocut. 75.01 x 62 cm (approx. 29 ½″ x 24 ⅖″). Ed. no. 154/175.

124

124. ***A Half Century of Illustrated Books,*** 1956. Zinc lithograph signed with red pencil. 69.49 x 49.81 cm (approx. 27 ¼″ x 19 ½″).

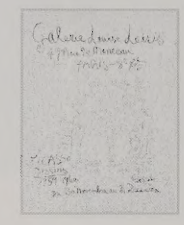
STOLEN ART (cont.)

125. ***Madoura,*** 1961. Color linocut. Ed. no. 55/100. signed /r. 75 x 62 cm (29 ½″ x 24 ⅜″).



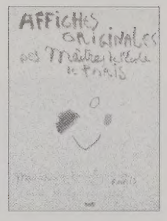
125

126. ***Galerie Louise Leiris,*** 1960. Lithograph. 66 x 50 cm (approx. 26″ x 19 ¾″).



126

127. ***Original Posters of the Masters of the Ecole de Paris,*** 1959. Lithograph. 66 x 49 cm (approx. 26″ x 19 ¼″).



127

128. ***Toros en Vallauris,*** 1957. Linocut signed in red pencil l/r. 100 x 66 cm (approx. 39 ¼″ x 26″).

128

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129. **DAMIEN HIRST** (English, born 1965). ***Perillartine,*** 2012. See color photo on inside back cover.

PHOTOGRAPHS

130. **IRVING PENN** (American, 1917-2009). ***Mouth (for L'Oreal), New York,*** 1986. Dye transfer photographic print. 47.4 x 46.51 cm (approx. 18 ¾″ x 18 ¼″). Signed verso. *L17.474. Stolen from a studio in London, England on April 19, 2017.

130

SCULPTURE

The following works by **GRAHAM HIGH** (English, contemporary) were stolen from a gallery in London, England on May 2, 2017. *L17.775:

131. ***Elephant Head IV,*** 2008. Bronze with a green patina and polished tusks mounted on a 3-inch high wooden base. 72 x 59 x 68 cm (approx: 28 ¼″ x 23 ¼″ x 26 ¾″). Signed: G.J. High ARBS. Ed. no. 2/9.

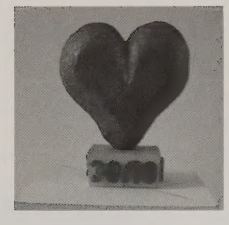
131

132. ***Preening Horse,*** 1998. Bronze. 25 x 43 x 12 cm (approx. 9 ¾″ x 17″ x 4 ¾″). Ed. no. 2/9.

132

133. ***Rolling Horse,*** 2005. Bronze. One knee has been repaired. 36 x 60 x 39 cm (approx. 14 ¼″ x 23 ½″ x 15 ¼″).

133



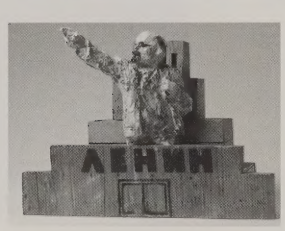
134

The following works by **LEONID SOKOV** (Russian, born 1941) were stolen from storage in Montreuil, France on June 28, 2017. *L17.1100:

134. ***Gold Heart,*** ca. 1980-83. Painted wood. 30 x 22 x 12 cm (approx. 11 ¾″ x 8 ½″ x 4 ¾″).

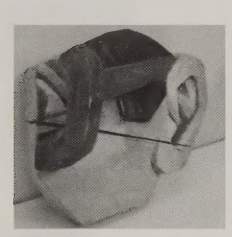
135

135. ***Hammer and Sickle with Fur Skin,*** 1988. Wood and fur. 60 x 60 cm (approx. 23 /2″ x 23 ½″).



136

136. ***Lenin Still Speaking,*** 1983. Oil on plywood and plaster. 63.5 x 94.6 x 31.75 cm (approx. 25″ x 37 ¼″ x 12 ½″).



137

137. ***Portrait of Slava Sokhransky.*** Oil on wood. 33 x 34 cm (approx. 13″ x 13 ¼″).

138

138. **JEAN BOGHOSSIAN** (Lebanese, born 1049). ***Abstract African,*** 2015. Oak. 200 x 50 cm (approx. 78 ¾″ x 19 ¾″). *L17.873. Stolen outside the entrance of a police station in Brussels, Belgium on June 1, 2016.

139

139. **HARRY ANDREW JACKSON** (American, 1924-2011). ***Safe and Sound,*** 1982. Bronze. 48.26 x 53.34 x 22.86 cm (19″ x 21″ x 9″). Inscribed on the base: For Moya with Love/From Your Goddamned Son-in-Law. From an edition of 60. *L17.893. Stolen from a private residence in Bakersfield, CA on June 13, 2017.

140

140. **CHRISTIAN LEMMERZ** (German, born 1959). ***The Rio Kid,*** 2002. Bronze. 110 x 40 x 25 cm (approx. 43 ¼″ x 15 ¾″ x 9 ¾″). *L17.1166. Stolen from a private residence in Copenhagen, Denmark on July 8, 2017.

141

141. **MARGARET LOVELL** (English, born 1939). ***Leaf Form,*** 1968. Bronze mounted on a wooden base. 45.72 x 30.48 x 10.16 cm (18″ x 12″ x 4″). Signed "ML." Ed. no. 5/9. *L17.1335. Stolen from a private residence in West Yorkshire, England on August 8, 2017.

142

142. **Unknown Artist** (Ecuadoran, 18th century). ***The Child Jesus,*** 1750. Polychrome wood. H: 8 x L: 25 cm (approx. 3 ¼″ x 9 ¾″). Jesus was the only figure stolen from a Nativity scene. *L17.761. Stolen from a NYC warehouse on October 10, 2016. See also item nos. 145-147.

STOLEN ART (cont.)

BOOKS, MANUSCRIPTS

The following two books were stolen from a hotel in Genicourt, France on June 17, 2017. *L17.943. See also item nos. 95, 96 and 148:

143. ***Homage to Louis Emerique for the 25th Anniversary of the Union of Credit of Brussels, 1848-1873*** (Belgian, 19th century). Lithographed by Severeyns, Brussels. 50.5 x 39.5 cm (approx. 19 ¾″ x 15 ½″).

143

144. ***Platonis*** (French, 16th century). Plato's works. Translated by Marsilio Ficino.

144

DECORATIVE ARTS

Silver

The following three items were stolen from a NYC warehouse on October 10, 2016. See also item no. 142. *L17.761:

145. **MIGUEL GUERRA** (Guatemalan, 18th century). ***Tureen,*** 1786. Silver. 22.5 x 35 x 30 cm (approx. 9″ x 13 ¾″ x 11 ¾″). With a maker's mark and a mark of Guatemala de la Asuncion.

145

146. **Unknown Artist** (Mexican, 17th century). ***Chalice,*** 1650. Silver gilt and enamel. 20 x 15 cm (approx. 7 ¾″ x 6″).

146

147. **Unknown Artist** (Ecuadoran, 18th century). ***Coquera,*** 1750. Coconut wood with silver locks/ fittings. 15 x 24 x 18 cm (approx. 6″ x 9 ½″ x 7″).

147

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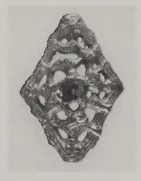
148. **JOHANN MITTNACHT III** (German, 18th century). ***Pair of cups,*** c. 1743-1745. Gold vermeil over silver. Ht: 9 cm; D: 8 cm. Marked with the letter F. One cup is decorated with an autumn harvest scene and a scorpion in a cloud; the other cup is decorated with a summer harvest scene and a girl in a cloud. . *L17.943. Stolen from a hotel in Genicourt, France on June 17, 2017. See also item nos. 95, 96, 143 and 144.

148

149

150



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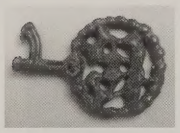
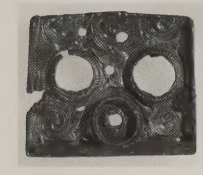
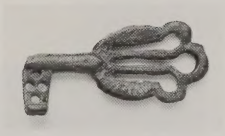


157



158



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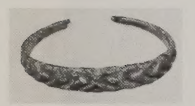
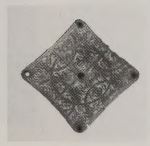


162



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172

Breaking News: As IFAR Journal went to press, we learned that police in Bergen, Norway arrested four men in connection with this burglary and have recovered nearly two-thirds of the stolen items. Update will follow.

The following 24 antiquities were among approx. 400 artifacts from the Iron Age, Migration Period and Viking Age (500 BC – 1030 AD) stolen from the University Museum of Bergen in Norway during the weekend of August 11-13, 2017 after thieves smashed a window on the seventh floor. The security alarm system was activated twice during the weekend, but guards found nothing amiss until after the burglary. The International Council of Museums (ICOM) asks that anyone who suspects that a cultural object originates from the Bergen Museum please contact illicit-traffic@icom.museum. In the meantime, the museum has published hundreds of pictures of the stolen items on social media:

149. **B419** ***Trefoil Brooches*** (Øksendal, Vanksdal, Hordaland).

150. **B424** ***Pair of Thin Brooches*** (Hovden, Bø, Nordland).

151. **B431** ***Brooch*** (Lyso, Stryn, Sogn og Fjordane).

152. **B481** ***Armring*** (Herabakka, Suldal, Rogaland).

153. **B492** ***Fitting*** (Scim, Odda, Hordaland). See color photo on inside back cover.

154. **B670** ***Cup*** (Vangen, Aurland, Sogn og Fjordane).

155. **B3456** ***Trefoil Brooch*** (Kvåle, Sogndal, Sogn og Fjordane).

156. **B4233** ***Fitting*** (Gausel, Stavanger, Rogaland).

157. **B4505** ***Key*** (Mindresunde, Stryn, Sogn og Fjordane).

158. **B4752** ***Fitting*** (Folva, Stryn, Sogn og Fjordane).

159. **B4860** ***Key*** (Ardalstange, Ardal, Sogn og Fjordane).

160. **B6360** ***Key*** (Mo, Ørsta, Møre og Romsdal).

161. **B6371** ***Buckle*** (Ytterdal, Norddal, Møre og Romsdal).

162. **B7662** ***Armring*** (Kaldherm, Etne, Hordaland).

163. **B8256** ***Fitting*** (Bjørke, Ørsta, Møre og Romsdal).

164. **B8310** ***Pair of Armrings*** (Bakko, Odda, Hordaland).

165. **B8388** ***Buckle*** (Sande, Høyanger, Sogn og Fjordane).

166. **B8436** ***Ring Buckle*** (Brekke, Høyanger, Sogn og Fjordane).

167. **B8669** ***Fitting*** (Torvam, Aurland, Sogn og Fjordane).

168. **B9065** ***Fitting*** (Nes, Sogndal, Sogn og Fjordane).

169. **B10243** ***Fitting*** (Hantveit, Gulen, Sogn og Fjordane).

170. **B11701A** ***Pendant*** (Ytre Moa, Årdal, Sogn og Fjordane).

171. **B12045** ***Pair of Thin Brooches*** (Hauge Stranda, Møre og Romsdal).

172. **B17420.1** ***Buckle*** (Eide, Gloppen, Sogn og Fjordane).

MISSING ART

PAINTINGS

The following two paintings were missing from storage in Carpinteria, CA on January 1, 2015. *L17.1108:

4. **OLIVER CLARK** (English, 1853-1927). ***Still Life with Fruit.*** Oil on canvas on board. 20.32 x 25.4 cm (8″ x 10″). Signed l/r.

4

5. **GEORGE WRIGHT** (English, 1860-1942). ***Huntsman Riding a Horse, "Taking the Fence."*** Oil on canvas. 20.32 x 30.48 cm (8″ x 12″). Signed l/l.

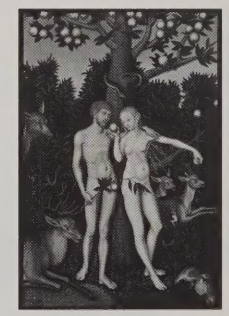
5

The following two paintings were missing from storage in Zabowicki, Poland in January 1945 (a WWII loss). *W17.43:

6. **LUCAS CRANACH THE YOUNGER** (German, 1515-1586). ***Double Portrait of Martin Luther and Philip Melanchton,*** Oil on panel. 36.8 x 56.49 cm (approx. 14 ½″ x 22 ¼″).

6

7. **WOLFGANG KRODEL I** (German, 1500-1561). ***Adam and Eve in the Garden of Eden,*** 1543. Oil on panel. 118 x 79 cm (approx. 46 ½″ x 31″). Signed "WK" on the tree trunk.



7

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8. **PIERRE- LOUIS CRETEY** (French, 1635-1702). ***Saint Jerome in the Wilderness.*** Oil on canvas. 37 x 22 cm (approx. 14 ½″ x 8 ¾″). *L17.1081. Missing from a gallery in London, England on September 29, 2016.

8

9. **PEREGRINE HEATHCOTE** (English, contemporary). ***Double Game,*** 2015. Oil on canvas. 76.2 x 91.44 cm (30″ x 36″). *L17.1180. Missing from a private residence in Oxfordshire, England on June 27, 2017.

9

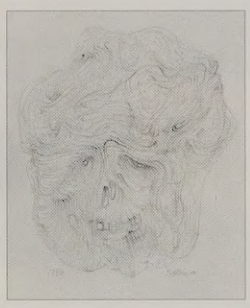
10. **FRANCESCA LOWE** (1979-2017). ***Abundance.*** Oil on canvas. 147 x 173 cm (approx. 57 ¾″ x 68 1/8″). *L17.1082. Missing in London, England on April 10, 2016.

10

11

11. **UNKNOWN ARTIST** (English, 19th century). ***Portrait of Mary Paton.*** Oil painting. 100.33 x 80 cm (39 ½″ x 31 ½″). [The dimensions include the gilt frame.] Stenciled on the plaque on the frame: B1782 Mary Paton D1870. On the verso: a label from 1960 stating the work has been cleaned and relined. *L17.1298. Missing in transit in Royston, England on November 21, 2016.

WORKS ON PAPER



12

13

The following two works on paper by **HANS BELLMER** (German, 1902-1975) were missing from an auction house in Cologne, Germany on May 23, 2017. *L17.1172:

12. ***Figures,*** 1948. Pencil on paper. 15 x 13 cm (approx. 6″ x 5 1/8″). Label reads: Levy Gallery, Hamburg.

13. ***Untitled,*** 1954. Pencil on paper. 14 x 9.5 cm (approx. 5 ½″ x 3 ¾″). Signed and dated l/r. Label reads: Levy Gallery, Hamburg.

14

14. **RENÉ GUIETTE** (Belgian, 1893-1976). ***Untitled,*** 1968. Gouache on paper. 74 x 43 cm (approx. 29 1/8″ x 17′). Signed l/r. Dated l/l with the numbers placed vertically. *L17.1331. Missing from the artist's archives in Brussels, Belgium on April 12, 2017.

MIXED MEDIA

15

15. **DAVID SPILLER** (English, born 1942). ***Olive Oyl "Just You Know Why,"*** 2010. Mixed media and silkscreen. 99.5 x 99 cm (approx. 39 1/8 x 39″). Ed. no. 47/75. *L17.1359. Missing in Belgium on August 15, 2017.

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*Numbering for the Vol. 18 Cumulative Index of Missing Art began with Vol. 18, no. 1.

RECOVERED ART

PAINTINGS

The following three paintings by **FRANCIS BACON** (British, 1909-1992), among five works stolen from the private residence of financier José Capelo Blanco, a close friend of the artist and frequent subject, in Madrid, Spain in July 2015 (*L15.1; see *IFAR Journal,* Vol. 17, nos. 2&3), were recovered by Spanish police in July 2017:

7. ***Portrait,*** c. 1980. Oil and pastel on canvas. 35.51 x 31 cm (approx. 14″ x 12″). On the verso: signed and dedicated to José Capelo Blanco.

8. ***Portrait,*** c. 1980. Oil and pastel on canvas. 35.51 x 31 cm (approx. 14″ x 12″). On the verso: signed and dedicated to José Capelo Blanco.

9. ***Portrait,*** c. 1980. Oil and pastel on canvas. 35.51 x 31 cm (approx. 14″ x 12″). On the verso: signed and dedicated to José Capelo Blanco.

7

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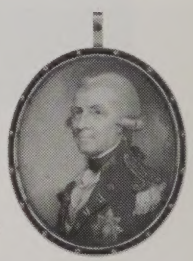
10. **FÉLIX BUHOT** (French, 1847-1898). ***Parisian Street Scene.*** Oil on canvas. 22.86 x 27.94 cm (9″ x 11″). Stolen from a private residence in Kent, England in February 2005. Recovered with the help of the ALR in August 2017.

11. **WILLEM DE KOONING** (Dutch/American, 1904-1997). ***Woman – Ochre,*** c. 1954-55. See color photo on inside back cover.

12. **MARCELLIN DESBOUTIN** (French, 1823-1902). ***Portrait of Madame Ackermann,*** 1886. Oil on canvas. 41 x 33 cm (approx. 16 1/8″ x 13″). *L92.457. Stolen from the Musée Anne-de-Beaujeu in Moulins, France on October 8, 1989 when a burglar cut the canvas from its frame during the museum's opening hours. After publishing a notice of the theft in an appeal to collectors, the museum was contacted by an individual, and the painting was recovered in August 2017.

12

13. **PHILIP JEAN** (British, 1755-1802). ***Joseph Yorke, Lord Dover (1st Baron of 2nd creation),*** c. 1785. Miniature painting. Ht: 7.29 cm (approx. 2 ¾″). *L06.392. Stolen from a medieval manor house in Gloucestershire, England in 2005. Recovered with the help of the ALR in September 2017.



13

14. **MARK SENIOR** (English, 1864-1927). ***Springtime.*** 50.6 x 61.11 cm (approx. 20″ x 24′). *L98.227. Stolen from a private residence in West Yorkshire, England in January 1998. Recovered with the help of the ALR in September 2017.

14

SCULPTURE

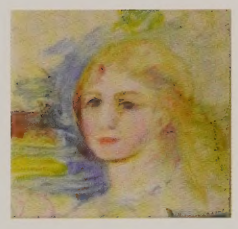
15. **HENRI MATISSE** (French, 1869-1954). ***Bust of Marguerite,*** 1906. Bronze. Ht: 16 cm (approx. 6 3/8"). Stamped: Cire/C.Valsuani/ Perdue/Bronze, M 126 9/10. *N91.63. Stolen from a museum in Berne, Switzerland on April 16, 1990. Recovered with the help of the ALR on November 9, 2017.

15

Numbering for the Vol. 18 Cumulative Index of Recovered Art began with Vol. 18, no. 1.

101

107



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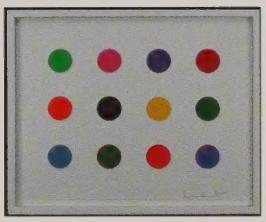
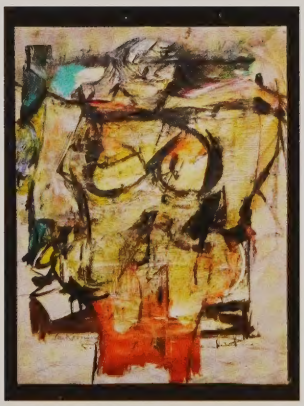


129

153



11

STOLEN ART

Paintings

101. **EDOUARD LEON CORTÈS** (French, 1882-1969). ***L'Arc de Triomphe,*** 1950. Oil on canvas. 33 x 45.72 cm (13″ x 18″). Signed l/r. *L17.1156. Stolen from a private residence in Mount Royal, Quebec, Canada on July 6, 2017. See also item no. 116.

107. **WILLIAM KENTRIDGE** (South African, born 1955). ***Untitled (Starry Night),*** 1993. Gouache on paper. 117 x 149 cm (approx. 46″ x 58 ½″). *L17.1097. Stolen from a private residence in New York City on March 1, 2015.

110. **PIERRE AUGUSTE RENOIR** (French, 1841-1919). ***Portrait of a Young Girl with Blond Hair.*** Oil on canvas. 14 x 12.2 cm (5 ½″ x 4 ¾″). Signed "A.R." u/l. *L17.1601. Stolen from an auction house in Saint-Germain-en-Laye, France on September 30, 2017.

Prints

129. **DAMIEN HIRST** (English, born 1965). ***Perillartine,*** 2012. Woodblock print on paper. 36.83 x 45.72 cm (approx. 14 ½″ x 18′). Signed and numbered 18/55 l/r. *L17.816. Stolen in transit between Dania Beach, FL and Avon, England on March 22, 2017.

Antiquities

153. **B492** ***Fitting*** (Scim, Odda, Hordaland). One of approx. 400 artifacts from the Iron Age, Migration Period and Viking Age (500 BC – 1030 AD) stolen from the University Museum of Bergen in Norway during the weekend of August 11-13, 2017, some of which have since been found. See also item nos. 149-152; 154-172.

RECOVERED ART

Paintings

11. **WILLEM DE KOONING** (Dutch/American, 1904-1997). ***Woman – Ochre,*** c. 1954-55. Oil on canvas. 101.5 x 76.81 cm (approx. 40″ x 30 ¼″). *N86.04. Stolen from the Univ. of Arizona Museum of Art in Tucson on November 29, 1985 when a couple distracted security guards and sliced the painting from its frame. The theft was registered in IFAR's stolen art database. Recovered on August 11, 2017 when the co-owner of a furniture and antiques store in Silver City, NM, who had bought the painting at an estate sale, returned it to the museum.

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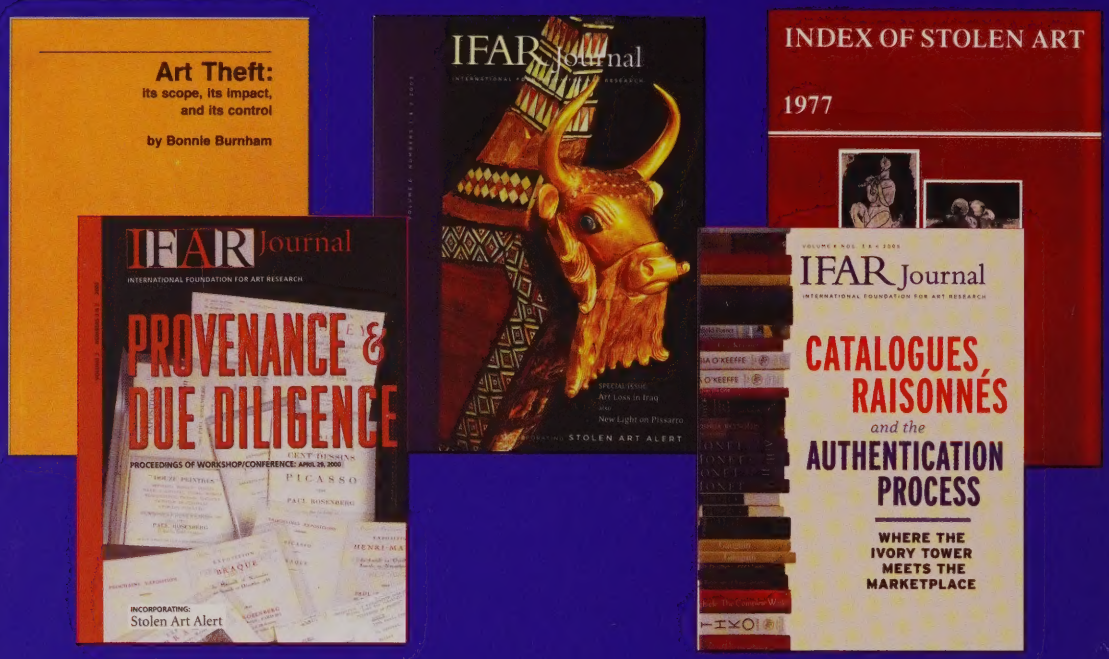

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